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JUSTICE AND THE POOR IN ENGLAND

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Justice and the poor in England

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Justice and the Poor in England

An account of the position of the poor in legal matters in England and Wales; and a study of the inequality in the administration of justice, where they are concerned, and of the remedies which have been attempted, and suggested.

BY

F. C. G. GURNEY-CHAMPION

With a Foreword by

THE RT. REV. THE LORD BISHOP OF MANCHESTER
THE RT. REV. THE BISHOP OF PELLA
THE REV. DR. J. SCOTT LIDGETT
MISS LUCY GARDNER

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To

MY MOTHER

AND THE POOR WHOM
SHE LOVED

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FOREWORD

THIS book is a complete study of the administration of justice in England and Wales, as it affects the poor. It is the result of some years of study of a problem of the greatest importance to any country, and which should to a peculiar degree be of interest to Christians.

Not being lawyers, we are not competent to express any opinion as to the merits of the suggested scheme of legal aid, or as to the remedy for the present position of poor folk in legal matters. But we have knowledge of the present deplorable condition of the poor in legal matters, who in many cases, through not being able to pay for the ordinary facilities to secure justice, are denied justice in the civil and criminal courts, and are unable to know, or be advised about, their legal rights and duties: it appearing that in those few cases where legal aid is given in this country, it is never given as of right, full and permanent, and is not of the character which an ordinary citizen is accustomed to receive by paying for it.

As Christians, we consider this position to be inexpressibly injurious, and inhuman; being, in fact, a festering sore in the body politic, having far-reaching consequences; and being, moreover, contrary to the teaching of the Lord Jesus Christ.

We use with regard to this book the same words used by Mr. Elihu Root in a foreword that he wrote to the United States book on *Justice and the Poor*:—"No one doubts that it is the proper function of Government to secure justice. In a broad sense that is the chief thing for which Government is organized. Nor can one question that the highest obligation of Government is to secure justice for those who, because they are poor and weak and friendless, find it hard to maintain their own rights. This book shows that we have not been

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performing that duty very satisfactorily, and that we ought to bestir ourselves and do better."

The subject is non-party. It is the duty of the Government of the day to secure the effective and universal enjoyment of the *existing* law and constitution, for both rich and poor, without substituting therefor expedients or palliatives; and to do so without delay.

W. MANCHESTER,
The Lord Bishop of Manchester.

WILLIAM F. BROWN,
The Bishop of Pella.

J. SCOTT LIDGETT,
Past President, and Honorary Secretary, of the National Council of Evangelical Free Churches.

LUCY GARDNER,
Society of Friends, and C.O.P.E.C.

PREFACE

THIS book is intended to make clear, to the man in the street not being a lawyer, the whole question of the administration of the law in England and Wales, as it affects members of the community, who by reason of poverty are unable to get justice, either in the ordinary courts of the land, or as to advice about their legal rights and remedies, their legal liabilities and duties. The problem of legal aid to the poor in this country has been looked at from the wrong point of view, and the most desperate efforts have been, and are being, made to satisfy the legal needs of the poor by charity, flavoured with judicial discretion.

A study of the problem necessarily involves criticism—it may be strong criticism. If it should be thought that any criticism made of altruistic lawyers is unjust or ungracious, I think it fair to acknowledge that such criticism would apply, perhaps, even more strongly to me : for all my life, until two years ago, I have been an enthusiastic supporter of charitable remedies. It does not seem possible to form a true judgment on this matter without some study of the position in foreign countries, and without actually living amongst the poor, and becoming acquainted with their legal needs in their own localities.

An enormous amount of charitable work is done by both branches of the legal profession in the most unobtrusive manner. And it is impossible to speak too highly of the devotion and self-sacrifice of these unknown men. Lawyers are as charitable as any other class of the community. And the official organizations representing lawyers have made really heroic efforts to solve the problem of legal aid by charity. This book is intended to show that these charitable efforts have not given, and cannot give, the poor their constitutional right to equality in the administration of justice, that they can only touch the fringe of the problem, and are most harmful, because they produce national and self deception, blinding the eyes of those not acquainted with legal matters or the position of the poor, to a condition of things, amounting, as it does, to such a denial of justice, as is really a disgrace to our modern civilization.

Criticism is much easier than construction. And con-

struction, when the question of economy in the national administration of finance is, admittedly, one of supreme importance, becomes very difficult. One can only submit that as equality in the administration of justice is the foundation and primary duty of government, necessary economies must be effected elsewhere, if otherwise proper provision cannot be made, to secure for those who cannot help themselves, their constitutional rights.

The remedy suggested is by no means ideal, because it is impossible to get the best, continuous, permanent, service from unpaid volunteers, however enthusiastic they may be. But the suggested scheme would do away with that glaring unfairness which does not provide payment for even the whole of the out-of-pocket expenses of a lawyer acting for the poor ; and for the first time in our history, it would provide one and the same organization to administer the whole of the legal aid to the poor, without exception or exclusion by a rigid poverty test limit, or other technicalities.

To me the light and path seem clear. But the possibilities of blurred vision are realized. It seemed desirable that others, with greater knowledge of the national financial position, and with more experience of the inner working and attitude of the organizations belonging to lawyers, should at any rate have the opportunity of understanding the real facts, without reservation.

In mentioning that one has been treated with much courteous kindness by the Lord Chancellor's Department, and by all those connected with it, so also by the Poor Persons Department, which, without question, have the cause of poor folk really at heart, I am only giving expression to the general experience of all those persons who have been brought into contact with either of those departments, both of which, I think, have been hopelessly handicapped by charity.

I am indebted to Mr. R. A. Cunningham, the assistant librarian of the Law Society, for much courtesy and help, during the last two years, the object of which, possibly, he did not then visualize.

Since this book went to Press, certain questions have been put, and replies given, in the House of Commons, which are useful as showing the attitude and informative knowledge of the Government towards the problem of legal aid. They are set out in the Addendum.

F. C. G. GURNEY-CHAMPION.

December, 1925.

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Nulli vendemus, nulli negabimus aut differemus, rectum aut justiciam
Magna Carta, Article 40.

Nulli vendemus, nulli negabimus aut differemus, rectum vel justiciam.
9 *Henry III., Cap.* 29.

JUSTICE AND THE POOR IN ENGLAND

"To the poor the Courts are a maze.
If he plead there all his life,
Law is so lordly
And loath to end his case;
Without money paid in presents
Law listeneth to few."

PIERS PLOWMAN.

CHAPTER I

JUSTICE, AND THE EFFECT OF ITS DENIAL, BECAUSE OF POVERTY

Justice—What it is—The Constitutional right to equality in the administration of justice—Poverty produces inequality—Magna Carta, Paragraph 40, 11 Henry VII., Cap. 12—What equality means—The effect of the denial of justice.

EQUALITY in the administration of justice is the foundation, and the ultimate test, of government. Justice is a great but simple principle, and the whole secret of success in all government. It has been defined as the fundamental and almost only virtue of social life. It is something incomparably greater, and more important, than anything else, for the well-being and contentment of a nation.

Justice—What it is—The Constitutional right to Equality of Administration.

An individual gives up private redress, in return for the enforcement of his rights according to law. If the law does not in fact enforce a citizen's rights, and redress his wrongs according to law, the consideration for the abandonment of private redress has failed, government is useless, and the only remedies are reform, annulment of the rights, or revolution.

Lord Campbell said that, with regard to any judicial system, "whatever is best administered is best," and that the due distribution of justice depended much more upon the rules by which suits are conducted, than on the perfection of the code by which rights are defined. The equal and proper *administration* of justice is really of greater importance than the equality, or quality, of substantive laws.

So far as England is concerned, the substantive law, with the exception of the Trades Disputes Act 1906, would seem to be fair and equal to all classes and sections of the community. But so far as its administration is concerned, inequality is caused by the poverty of certain sections of the people, who are unable in all cases of administration of the law to get equality with those persons who can afford to pay for the ordinary facilities to secure justice, and with regard to many of whom there is a total denial of justice, either because they are unable to pay for legal advice, or because they cannot pay court, witness, or other fees, which must be paid in order to secure justice.

Poverty produces inequality in administration of justice.

It has been calculated that well over ten per cent. of the population are denied justice, solely on account of their poverty. Without question, the administration of law in England is pure; and, without question, the judges and those engaged in the administration of justice endeavour to make that administration equal; but under modern conditions, with the multitude and complexity of modern legislation, the technicalities of procedure, pleadings and evidence, and the conditions of modern life, it is quite impossible for the tribunal, without legal aid to the poor, to make the administration of justice equal.

Our earliest laws have directed in express terms that they are to be administered regardless of class distinctions, and that equal justice is the right of rich and poor. The earlier Anglo-Saxon laws were embodied in Magna Carta. The constitutional right to equality in the administration of justice, is set out in the fortieth paragraph of Magna Carta:—"Nulli vendemus, nulli negabimus, aut differemus, rectum aut justiciam." When a man is so poor that he cannot afford to pay for advice, court processes, or legal aid, in fact right and justice are refused, or denied, to him.

Magna Carta, Paragraph 40, and 11 Henry VII., Cap. 12.

In 1495 the constitutional right to equality in the administration of justice—for "nulli" must mean equality—set out in Magna Carta, was amplified and explained by 11 Henry VII., Cap. 12, which enacted:—"That *every poor person* or persons having causes of action against any person shall have . . . writs and subpœnas . . . *therefor nothing paying*, for the sealing, nor to any person for the writing . . . that the Chancellor shall assign clerks to write the said writs ready to be sealed: and also *learned* counsel and attornies for the same, without reward taken therefor; and if the writs be returned before the King in his bench, the justices shall assign to the said poor person or poor persons, counsel

learned *by their discretions*, which shall give their counsels, nothing taking for the same : and the justices shall likewise appoint attorney for such poor persons, *and all other officers requisite and necessary* . . . which shall do their duties without any reward for their *counsels, help, and business*, in the same : and the same law shall be observed of all such suits to be made before the King's justices of his common place, and barons of Exchequer, and all other justices in the courts of record." This statute, until it was overloaded with judicial decisions, rules, and the creation of new courts, gave the poor equality in the administration of justice. It was repealed in 1883 by the Statute and Civil Procedure Act (46 and 47 Vic., c. 49), and thereafter attempts have been made to satisfy the legal needs of the poor on wrong lines, as a matter of discretion or charity, and from the point of view of legal education, and professional privilege. But Magna Carta is still part of the English constitution. And the poor are still entitled to equality in the administration of justice, and to resent in the strongest possible way the total denial of justice which often arises because of poverty.

Where a poor person has no means, or not enough means without aid to get legal advice, or to bring, or defend proceedings, in the civil and criminal courts, he cannot get justice. Equality in the administration of justice would mean that a poor person would be entitled, (*a*) to legal advice from a qualified lawyer, (*b*) after a poverty test and probabilis causa litigandi test, in civil litigation, to the remission of court fees, the provision of necessary out of pockets, and the provision of a solicitor and often of a barrister, (*c*) after a poverty test in criminal proceedings, in at least every case where the prosecution is professionally represented, or is conducted by the police, to the provision of witnesses and other necessary expenses, and the provision of a solicitor in the police courts, and of a solicitor and counsel at assizes and quarter sessions, for the purposes of defence. There is already a Public Prosecutor who takes up prosecutions in proper criminal proceedings. In England there is no Public Defender.

What Equality means.

The denial of justice, in cases of poverty, is the greatest blot upon our modern civilization, is the root cause of many social evils, and encourages trickery, fraud, and dishonesty.

The Effect of the denial of justice.

The effect is far-reaching, though difficult to trace. The poor have not heard of Magna Carta. They take it as a matter of course that there should be, as they describe it, one law for the rich, and another for the poor. The Manley

Report of the United States Commission on Industrial Relations (1915) gave as the third cause in order of importance for industrial unrest, the denial of justice.

It is notorious that production is hindered, and good work is prevented, by mental worry. Many a good working man, or good working woman, is partially incapacitated, by mental worry, or through being harrassed, often unjustly, when a few minutes' legal advice from a competent lawyer, would give the relief which an ordinary citizen is able to obtain, by paying for it. The State recognizes that it is good business to safeguard the health of employees, though Magna Carta made no stipulation about health or medical benefits. It does not seem to be appreciated that worry spells inefficiency; that a man who, for example, has lost his home through inability to understand the complicated and technical Rent Acts, and is unable to find another home, cannot in that condition do good work.

An admirable summary of the effects of the denial of justice, as it affects the United States of America, is given by Mr. Reginald Heber Smith in *Justice and the Poor*:—"Nothing rankles more in the human heart than the feeling of injustice. It produces a sense of helplessness, then bitterness. It is brooded over. It leads directly to contempt for law, disloyalty to the Government, and plants the seeds of anarchy. The conviction grows that law is not justice, and challenges the belief that justice is best secured when administered according to law. The poor come to think of justice as containing only laws that punish and never laws that help. They are against the law because they consider the law against them. A persuasion spreads that there is one law for the rich and another for the poor."[1]

In every case where justice is denied to a poor man, who by a legal maxim is presumed to know the law—ignorantia legis non excusat—though he may be quite unable to get or to pay for legal advice or to bring his just claim before the courts of this land, the seeds of revolution or anarchy are sown—and sown broadcast.

"In that direction we have imperceptibly, unconsciously, and unintentionally drifted. The end of such a course is disclosed by history. Differences in the ability of classes to use the machinery of the law, if permitted to remain, lead inevitably to disparity between the rights of classes in the law itself. And when the law recognizes and enforces a distinction between classes, revolution ensues or democracy is at an end."[1]

[1] R. H. Smith in *Justice and the Poor*.

CHAPTER II

WHERE, BY WHOM, AND HOW, JUSTICE IS ADMINISTERED IN ENGLAND AND WALES

The Civil Courts—Criminal Courts—Legal advice and Conciliation—Barristers or Counsel—Solicitors—Speculative Solicitors—Bar etiquette creates difficulties—The Judges—The Law Society and the Provincial Law Societies—Costs provide what is necessary for making judicial machine work—Two main objects of costs are (1) revenue, (2) to act as deterrent—By English Poor Persons Regulations costs do not act as deterrent—English rules as to costs bad and against public policy. The denial of costs to a successful poor person is contrary to English practice before the Judicature Acts.

THE legal position of poor persons in Scotland is on the whole better than it is in England, as to most of the courts there. The Scotch system, notably as to the absence of a general organized system of legal advice and legal aid in the police courts, has its defects. But, taken as a whole, Scotland is far ahead of England and Wales, in the provision of legal aid for the poor. And this chapter is only intended to refer to the administration of justice in England and Wales.

Shortly and broadly, and without reference to exceptions, detail, or peculiarities, justice is administered in England and Wales by judges, magistrates, and subordinate officials, in Courts of Justice. Civil rights and remedies, as a rule, are dealt with in the High Court of Justice, at Assizes, and in the County Court. Some civil rights, and some semi-civil or semi-criminal rights, are dealt with in the Police Courts, such rights generally affecting poor persons to a peculiar degree. Appeals in the civil courts lie to a Divisional Court, the Court of Appeal, and ultimately sometimes to the House of Lords.

The Civil Courts.

The great proportion of cases affecting poor persons in civil litigation are tried in the County Courts, which are essentially poor men's courts, with limited jurisdiction. Next in order of importance as affecting the civil rights of the poor, come the Police Courts, which have jurisdiction in matrimonial cases for separation or maintenance, in affiliation cases, in disputes as to wages, etc. The High Court of Justice is, as would be expected, least used of all the civil courts by poor persons. And it is only used in those cases, notably for divorce, where no other court has jurisdiction.

Criminal proceedings take place at Assizes, at Quarter Sessions, and at Petty Sessions or in the Police Courts. The most serious crimes, such as murder, must be tried at Assizes: and most indictable offences must be tried at Assizes or Quarter Sessions, after a preliminary enquiry in the Police Courts, where the justices have power, instead of sending the case for trial, to discharge the accused, if in their opinion the evidence is not sufficient to put him upon his trial. All the small criminal offences are tried at the Police Courts. The judge at Assizes is a trained and highly qualified lawyer. The judge at Quarter Sessions is often not a lawyer. With the exception of the stipendary magistrates, justices are not often lawyers, and generally have had no legal training. Justice is also in a limited or negative sense administered by the giving of legal advice by private lawyers, and in certain cases by justices in open court, in such a necessarily unsatisfactory manner as to be practically useless in those comparatively few cases where it is given. In connection with legal aid to the poor, legal advice and conciliation out of court not only would cover more than half the legal needs of the poor, if properly administered by qualified and trained lawyers, but it is really the key to the solution of the problem of legal aid; and the failure to realize that, has been one of the root causes in this country for the present deplorable position of the poor in legal matters. The subject is so important that a separate chapter will be devoted to it.

The Criminal Courts.

Legal Advice and Conciliation.

Lawyers in England are divided into two classes, barristers or counsel, and solicitors. A barrister is, or ought to be, a specialist or expert, and has an exclusive right of audience in the higher courts. He has many privileges. Amongst others, however negligent he may be in the conduct of his case, even though he may have accepted a brief and the fee for it, and eventually does not turn up at the trial and conduct the case, he is not liable for negligence like most other ordinary persons. No action for negligence, except for fraud or dishonesty, can be brought against a barrister.[1] He suffers under certain disabilities, which hinder, if they do not prevent, his doing much useful gratuitous work for the poor. The legal etiquette of the Bar makes a barrister of very little use as a poor man's lawyer. But whatever may be the effect on the poor of gratuitous court service by counsel, the effect on the barrister himself is good and useful if he is a youngster trying to get practice and experience in court, contrary to the Statute of 11 Henry VII., Cap. 12, and

Barristers or Counsel.

[1] J. R. V. Marchant on *Barristers-at-Law*.

contrary to the Bar custom of devilling, whereby an older and experienced barrister, "learned by his discretions," takes responsibility, and supervises the work of the youngster. Usually a barrister may not take instructions from or directly advise a lay client. It would usually be improper if he acted other than by way of a dock brief, or at the request of a judge, except on the instructions of a solicitor.[1] The solicitor is really the client that it is proper for a barrister to have, unless he is acting alone at the request of the judge at the trial or under that extraordinary procedure in criminal matters known as a "Dock Brief," which has been described as an absurdity, a palliative, un-Christian[2] and as useless.[3]

It is because of Bar etiquette, because he is not supposed to be allowed to advise lay clients, that a barrister is really useless, even if he were qualified, to give the poor advice. It is true that at some Poor Man's Lawyer Meetings devoted young members of the Bar do give legal advice to the poor. In those cases where it is done the advice is never given in writing, and the barrister, with perhaps only two exceptions, does not long continue to do so. For he is in a position of extraordinary difficulty. He is nervous and anxious—much like a cat on hot bricks—fearing that he may, though actuated only by altruistic motives, infringe some Bar rule or regulation. Moreover, a barrister is not permitted to take legal proceedings for fees due to him. It is for this reason that, when a brief is delivered to a barrister, the brief fee has to be then paid before any work is done. It is contrary to Bar etiquette for a barrister to discuss his fees with his client, the solicitor. For that reason a barrister keeps a clerk, or perhaps it would be more accurate to say that in some cases a clerk keeps one, or generally several barristers, whose primary duty it is to arrange the amount of their fees. A barrister's clerk would almost invariably view with disfavour gratuitous legal aid to the poor. Theoretically the road to the barrister leads through the clerk. A barrister has practically no office expenses.

Theoretically a solicitor is a business man working by ordinary business methods, and an average solicitor in good practice would have a fairly large staff of highly qualified clerks, who would do most, if not all, of the actual legal work. The office expenses for clerks' wages, and travelling expenses, for stationery, law stationer's charges for copying documents,

Solicitors.

[1] Thompson v Maskery (1882) 73 L.T. 401.
[2] C.O.P.E.C. Report on Crime, Vol. VI, p. 27.
[3] Minutes of Evidence on Poor Prisoners' Defence Bill.

etc., would amount to a very large sum. A solicitor has a right of audience in the inferior courts, such as the County and Police Courts. But as he receives much more in costs if he briefs a barrister to appear in these inferior courts, the practice of doing so is very common. Moreover, the better class of solicitor does not undertake County Court or Police Court work, and if he had to do it would prefer to brief counsel. The solicitor who undertakes advocacy is either a young solicitor attempting to work up a connection in that way, or he is a solicitor who specializes in one or generally both these courts, and who would not have the same standing in the profession as the ordinary country solicitor undertaking conveyancing and family work, or the London solicitor engaged in High Court, company work, commercial work, or family and conveyancing work. From amongst the solicitors doing County Court and Police Court work has arisen a special type of solicitor, who gets his living by undertaking speculative actions for the poor. In many cases these speculative actions are properly and fairly conducted; but the system of "no cure no pay" lends itself to grave abuses. Probably the poor are victimized by nothing so much as by some of these speculative low-class solicitors.

Speculative Solicitors.

It has been seen that a barrister does get very substantial and tangible benefits from being used, when young and inexperienced, in doing court work, even if that work is gratuitous. He gets experience. He gets advertisement, or becomes known. On the other hand a young solicitor gets experience in the office in which he is articled, or by temporarily taking a clerkship in some busy solicitor's office. The gratuitous work he would do for the poor would be of very little use to him in after life, unless he were going to specialize in the most undesirable kind of work for a solicitor. Nor does a solicitor, working behind the scenes, get any advertisement, unless the young barrister lets him down in court, when sometimes the judge by his stern criticism of the conduct of the poor person's case, gives the solicitor an advertisement which might hinder or ruin his career. On the contrary, it is not yet thought a desirable thing or an honourable thing in professional circles to give the poor free legal aid. Without question a solicitor looses caste by doing so.

The distinction between barristers and solicitors is really artificial. The two branches of the profession should be united, as in some other countries, and should each have the same rights and duties. When fusion has come about, the solution of the problem of legal aid to the poor on a voluntary

basis would be very much easier. The etiquette and privileges of the Bar are some of the greatest obstacles to a genuine reform bringing about the real equality of justice in cases of poverty. Bar Etiquette creates difficulties.

The judges of the superior and inferior courts, recorders, and stipendiary magistrates, are chosen only from members of the bar. The English judges are amongst the best in the world. Were it not for the heroic efforts of these judges to act as advocates for the defence, in addition to, and at the same time, acting as impartial judges—really a hopelessly impossible position—the plight of the poor in legal matters would be worse than it is. On the other hand, the fact that the judges do attempt to fill up the breach, in most cases in vain, has been used by lawyers generally as an excuse for delaying the provision of legal aid to the poor. The Judges.

As it has recently been suggested by a committee presided over by Mr. Justice P. O. Lawrence, that the Law Society, and provincial law societies, should administer or control legal aid to the poor in the High Court, it may be useful to refer shortly to those organizations. The Law Society is the great official organization of solicitors for England and Wales, and to it have been entrusted disciplinary powers over solicitors, which are exercised in the most careful and efficient manner. It is so powerful, both directly and indirectly, that no solicitor would care to fall out with it, or to get into its bad books. The Law Society and the Provincial Law Societies.

There are eighty-one, or more, local or provincial law societies scattered over England and Wales, which unite solicitors practising in certain districts, the great attraction of a provincial law society being its library. Most members of a local law society would also be members of the Law Society. Neither the Law Society, nor the provincial law societies, as to their particular localities, would in any district include the whole body of practising solicitors. A very large pro portion of solicitors would not belong to any law society; but the solicitors of highest standing would be members of the Law Society. As a general rule the President, Honorary Secretary and the Council of a law society are chosen because of their high professional standing. It would be quite exceptional for a County Court or Police Court practitioner to be elected to any of these positions. Some few of the provincial law societies—notably Manchester, Birmingham, and Liverpool—have encouraged, and assisted in giving, legal aid to the poor. Apart from these few local law societies, it would probably be safe to say, that there are very few

members of the governing body of any law society who have had experience of, or who understand, the legal needs of the poor. For the ordinary solicitor engaged in ordinary remunerative practice, though undoubtedly he does gratuitously help those poor persons he comes across, and is as charitable as any other member of the community, lives and moves in quite a different sphere, and has no opportunity of understanding, or knowing anything about, the problem of legal aid. That is the great difficulty with regard to the law societies administering legal aid to the poor. Unquestionably the law societies would keep the administration clean, honourable, and very efficient. Probably by no other means, other than control by the law societies, could a voluntary system of legal aid to the poor be kept clean, efficient, economical, and free from overlapping and abuses.

But do the law societies yet understand what equality in the administration of justice really means? Would not the tendency or temptation be to limit and restrict legal aid within the narrowest compass? Might not professional etiquette tend to obstruct, and hinder, the equality from becoming a reality?

Lawyers are as necessary, under modern conditions, as are doctors or other professional men. They have to live; and therefore are paid for their services by costs. The judges and other officials also have to be paid, and the fees paid by litigants, which partly enable this to be done, are included in the solicitor's bill of costs.

Costs provide what is necessary for making the judicial machine work.

In the course of litigation the solicitor, in addition to having to pay court fees, and counsel's fees, has also to pay considerable sums for out-of-pocket expenses, some of which would be fees paid to witnesses, and travelling expenses, which are included in the solicitor's bill of costs; in addition to which in an average solicitor's office there are large out-of-pocket expenses in connection with clerks' wages and stationery. In practice all interlocutory proceedings, and all court proceedings with counsel, are actually done by clerks, who have to be paid, whether or not they are doing gratuitous work for the poor.

The two objects of costs are—(1) revenue, (2) to act as a deterrent.

Costs therefore really consist of court fees, counsel's fees, the solicitor's profit costs, and the solicitor's out-of-pocket expenses.

Costs are the creation of statute law, and were really formally introduced into England by the statute 6 Edward I., Cap. 1. The two objects of costs are to get revenue, and

to act as a *deterrent* to frivolous litigation. From the earliest times the poor were safeguarded in the matter of costs.

It seems that before the Judicature Acts a successful poor person litigant in Chancery got costs like an ordinary litigant, but in the King's Bench he was not allowed costs. When the Judicature Acts were drafted the matter seems to have been overlooked, and since the Poor Persons Rules a successful poor person or pauper was only allowed to recover the actual out-of-pocket expenses.

In Scotland a successful poor person can recover costs like any ordinary litigant. There seems to be no proper reason why he should not do so. The argument generally put forward in support of the contention that a poor person should only be able to recover his out-of-pocket expenses is —" that it cuts both ways," meaning that an unsuccessful poor person is not liable for costs, therefore he ought not to be able to recover any. That is, if A, being a poor person, brings an action against B, and loses, he is not liable for any costs : and B, though successful, has to pay his own costs, contrary to the ordinary rule. And if D, being a poor person, brings a successful action against C, he can recover no costs from C except his out-of-pocket expenses. How does A's luck or C's luck help D's misfortune or B's misfortune? There is no privity between B and C, or between A and D. What happens in one action cannot affect the other. If a poor person is under no liability for costs when unsuccessful, there is no deterrent to frivolous litigation, other than the reasonable cause of action test. If a rich man is under no liability for costs, when unsuccessful, there is also no deterrent, and the position then is most harmful to the general community, in addition to being unfair to the poor person. The result of this rule is bad in many ways :—

By English regulations as to proceedings by and against poor persons, costs do not act as a deterrent.

(1) In those cases where a poor person is successful, if he could recover ordinary costs, they would include, in addition to his solicitor's costs, the court fees which had been temporarily remitted by the court. And the State could thus increase its revenue by being repaid the remitted fees in all cases where the poor person won.

(2) The principle is altogether wrong, that just because a rich man's opponent happens to be a poor man, he should *escape* the payment of costs, which he would have had to pay if his opponent had been a rich man.

The English Rule is bad in many ways and is against public policy.

(3) There is no ethical reason why a poor man should not be liable for the costs of unsuccessful litigation like any other litigant. If he is exempt, it is putting him in a privileged position, which is wrong. The poor are entitled to justice—not to privilege.

(4) If in fact a litigant is a poor man, the liability for costs cannot much hurt him, for one cannot get blood from a stone. At any rate, the relief from that liability, does not in any way counterbalance his deprivation of the right to recover costs when successful. Emphatically, such departure from the ordinary rule, does not cut both ways.

(5) In every case in England where fees are remitted by the State, and the poor man is successful, the State loses revenue. In every other civilized country, including Scotland, when the State has remitted fees, it gets them back when the poor man wins his suit.

(6) Perhaps the most serious objection of all is that both the primary reasons for litigious costs are destroyed by this absurd practice: (*a*) the State loses revenue, and (*b*) costs do not, where this rule (claimed to cut both ways) is in force, operate as a deterrent. The poor man, being under no liability to pay costs, has no deterrent. The rich man, whenever his opponent is a poor man, has no deterrent. The present English practice is therefore against public policy, and is one of the chief causes for the present unhappy position of the poor in civil litigation.

(7) If a successful poor person could recover costs like any other ordinary litigant, the whole problem of civil legal aid to the poor in all the courts except as to matrimonial proceedings—would be solved. By proper regulations and administration it could be made to also indirectly solve the problems of legal advice and conciliation out of court.

The present rule, preventing a poor person from recovering ordinary costs when successful like an ordinary litigant, is a growth unknown in foreign countries or even in Scotland, and is of comparatively recent origin in this country, nurtured and fed by the desire of the Bar to use the poor for the purpose of educating its young members.

Before the Judicature Acts a successful pauper litigant in the Chancery Courts received costs like an ordinary litigant.

In Shaen & Greville's book on *Costs* at page iii it is laid down :—" When costs are ordered to be paid to a party suing or defending *in forma pauperis* such costs shall be taxed as *dives* costs, unless the court shall otherwise direct." In olden times even the costs for copy documents were provided for; Shaen & Greville at page xxviii laying it down that :—" The charges for copy documents to a person admitted to sue or defend *in forma pauperis* shall be 1½d. per folio. Provided that if such person becomes entitled afterwards to receive costs, the charge for such copy documents shall be at the rate of 4d. per folio." Even as late as 1899 Cordery, on *Solicitors*, lays it down that :—" Persons suing or defending *in forma pauperis* shall have their costs taxed *as in other cases*." As will be seen later, the modern craze in England for denying to a successful poor person ordinary costs, is one of the root causes of the difficulties that now exist, and alone amounts to a denial of justice.

The denial of costs to a successful poor person is contrary to English practice before the Judicature Acts.

CHAPTER III

THE PRESENT POSITION OF POOR PERSONS IN ENGLAND AND WALES, AS TO LEGAL ADVICE

Legal advice is key to solution of legal aid problem—Legal advice by Magistrates—The police barrier—Legal advice at Poor Man's Lawyer Meetings—The absence of clerical help—Generally only a side issue to the Institution—Advice generally superficial—Difficulties of P.M.L.'s—Litigation arising from meetings—No co-operation—Generally unorganized—The Edinburgh Legal Dispensary and conciliation—American legal aid is organized—Legal advice at Religious Institutions—by Provincial Law Societies—at Settlements—by Trade Unions—by Political Parties—by Charities—by individual lawyers—P.M.L. Meetings run by individual lawyers—English Legal Aid Societies.

Legal Advice is the key to solution of problem of legal aid.

LEGAL advice is necessary in both civil and criminal matters. It is by far the most important requisite in connection with the administration of justice. Properly administered by trained lawyers, especially if the American methods of conciliation are used, it is the predominant, outstanding, factor in connection with legal aid to the poor. It is the key to the solution of the problem. Alone, it would solve more than half the legal needs of the poor.

Legal Advice by Magistrates.

The State and the local authorities make no provision for giving legal advice to the poor. Sometimes the poor, as a favour, can get free legal advice from the justices or magistrates in open court. They cannot get this advice as of right, but only as a favour. As a rule, no set time is fixed for giving it. Though there is one Metropolitan magistrate who sets aside one hour a week for the purpose of giving the poor free legal advice ; and in order to try and ensure a little privacy he has screens erected round the bench where he sits, so that if the crowd waiting in court can hear, at any rate the poor person receiving advice cannot be seen. Privacy, and the confidential nature of communications made to the person giving advice, are, of course, essential conditions of any effective legal advice. As a rule, when a poor person is able to get past the police, and to break in on the police court with a request for advice, he is told to wait until the hearing of all the cases has taken place ; and if he has time and patience to wait so long, he is told to go into the witness box and explain what on earth he wants advice about. The advice of a stipendiary magistrate, if he had time to really go

into the matter, would be valuable, though very often a Poor Man's Lawyer is put into the awkward position of advising a client, who has got advice from a magistrate, that the advice given to him is without question wrong and unsound. This often happens when the magistrate has advised on a point arising under the Rent Acts. But the advice of an ordinary magistrate, not being a lawyer, especially as to civil matters, would be practically useless, except from a paternal point of view. It is also very difficult for a magistrate to give advice as to any matter which may subsequently come before him for judicial decision. In one case recently, where a Metropolitan police court magistrate had given advice obviously wrong in law, a Poor Man's Lawyer, to whom the poor person came, had to advise that the poor person's chance of success depended entirely upon whether he could be certain of getting his case heard before that particular magistrate. There are many difficulties in the way of magistrates giving legal advice.

In practice, neither the police nor the majority of magistrates encourage poor people to come for advice. It is not the primary or proper business of a magistrate to give advice, nor is he qualified to give it in civil matters. If the poor were to come for advice in large numbers the ordinary business of the court could not be conducted. The result is that the poor requiring advice cannot easily, in most courts, get through the police to the magistrate. If the poor man is successful, he is generally told to consult a solicitor, or very often in London to go to a Poor Man's Lawyer Meeting. But very few poor people in fact go to the magistrates for advice. A poor man is as sensitive as a rich man about discussing his private or family affairs in open court.

Practically, the giving of legal advice in the police courts may be ignored and put aside, as having no appreciable bearing on the problem, and as holding out no hope of improvement or extension in that direction.

Legal Advice at Poor Man's Lawyer Meetings.

The various religious denominations, institutions, provincial law societies, settlements, and a few organizations run by members of the Bar, hold once a week, or once a fortnight, Poor Man's Lawyer Meetings, at which any poor person can receive free legal advice. At some of these meetings the poor are invited to make a small voluntary contribution to the expenses. But at the majority of these meetings the advice is absolutely free, and no donation is asked for or would be taken. These voluntary contributions

—objected to by the lawyers—are taken by the institution, not by the lawyer.

It is common practice for county court judges and police court magistrates to send poor persons to Poor Man's Lawyer Meetings for legal advice. And in some of the courts notices are exhibited, informing the poor that they can obtain legal advice at such meetings.

At the large Poor Man's Lawyer Meetings tickets are given to the poor as they come in, showing the order in which each person is to have advice. And the poor arrive for these tickets often some time before the lawyer arrives. Sometimes so many poor require advice that they are told no more can have tickets for that night. Sometimes the crowd admitted is so large that some of the poor, after waiting two or three hours, go away, or are sent away, without any advice. The lawyers giving gratuitous advice do their best to advise everyone. And the work, under great difficulties, is most valuable to the poor. But it only touches the fringe of the problem ; and only a very small percentage of the poor can get advice at these meetings.

This work is done by volunteer lawyers of both branches of the profession, who receive no payment at all for their services, the meetings being held in the evening, in the slums or districts where the poor live. It is impossible to exaggerate the difficulties under which these Poor Man's Lawyers work. They have no funds, at any rate for the advice part of the business. They have no clerks (with the exception of two or three meetings, where volunteer clerks sometimes turn up) to do the detail and clerical part of the work, as is customary in a solicitor's business. If a letter is written at such a meeting, the solicitor must write it out in his own hand, and in addition, as he probably does not know how to copy letters by mechanical means, he must then go through the intolerable labour of making a copy of the letter in his own hand. Perhaps this is the reason why it is so exceptional for a letter to be written at any of these meetings. One of the law societies, which has established a Poor Man's Lawyer Meeting, has the following as one of its rules :—" The assistance given will, under ordinary circumstances, be limited to advice, and in *proper* cases to the writing of *one* letter." So that to the inherent difficulty of trying to make bricks without straw, is added the difficulty that those responsible for the management do not want any, or many, bricks. It is impossible to bring about conciliation out of court without writing more than one letter.

The absence of clerical help at Poor Man's Lawyer Meetings.

Unless these meetings are held under the auspices of a law society they are, as a rule, only a side issue to, and a very subsidiary part of, the work of the institution where the meeting is held. Probably it would be considered, as a rule, to be the least important part of the work of the institution, being an extraneous growth having nothing to do with the work or original aim of the institution, and the work being actually done by outside lawyers having no close connection with the management of the institution. One lawyer, holding a Poor Man's Lawyer Meeting at a settlement, had his room for giving advice moved six times in twelve months to different parts of a large building, which necessitated, when a change of room was made, that the poor on three occasions should use three different entrances. Even the poor, when receiving free advice, expect to know where they have to go to get it. Sometimes there is not even a door-keeper. At very few of these meetings are there any law books for reference. In not one case out of a hundred would the lawyer giving advice have time to refer to books, even if they were available. The advice given is *ad hoc*. Members of the Bar make it a rule never to give written advice. At one of the best meetings in London, conducted by members of the Bar only, it was stated by a member of the Bar present at, and in large measure responsible for, the meeting, that there was no case on record where at that meeting books had been consulted.

Generally, Poor Man's Lawyer Meetings are only a side issue to the Institution.

Advice generally superficial.

The lawyers giving this free legal advice are tired men, who have had a hard day's work in their ordinary professional business. The meeting usually starts about 6.30 p.m., and goes on until 9, 10 or 11 p.m., or later. Often a small crowd gathers outside before the doors open. In London and in large towns these meetings are usually held in the slums, a long distance away from the place where the lawyer resides, and sometimes he would not be able, after such a meeting, to reach his home until after midnight. There is nothing spectacular about the work, nothing which the ordinary altruistic lawyer can gain from it. On the contrary, if it were known he were a Poor Man's Lawyer, he would lose caste or professional standing.

Difficulties of P.M.L.'s.

When the legal advice is given under the auspices of a law society, the solicitor giving advice is not allowed to take up any litigation for a poor person to whom he has given advice. But when it is given under the auspices of a religious denomination or a settlement, it is only common practice for the solicitor to take up litigation for the poor to whom

Litigation arising out of Poor Man's Lawyer Meetings.

he has given advice, and sometimes a barrister would get briefs from the solicitor who takes up the cases when the barrister has given the legal advice. Probably the professional view would be against this practice. But from the point of view of the poor, they would undoubtedly not get free legal advice of the same quality and regularity as they do now in these institutions if the lawyers—the great majority of whom are solicitors—could have no opportunity of increasing their business and earning costs by taking up litigation for the poor. In most cases where this is done under the auspices of the religious denominations and settlements, the poor are not only fairly and properly treated by the solicitors and barristers conducting litigation for them, but in many cases they are very generously treated, the solicitor very often providing, out of his own pocket, the necessary out-of-pocket expenses for the litigation, which he would not be repaid unless the litigation were successful and the poor person were awarded costs. This system has the disadvantage of eliminating all doubtful, difficult, or expensive cases from coming before the courts. In such cases the poor cannot get justice. It is obvious that a solicitor (unless he is ultra altruistic) who is conducting litigation as a speculation, providing gratuitously not only his own services but also the out-of-pocket expenses, could only take up litigation when he felt certainty as to a successful result, and when only he would be able to recoup himself.

It is said that some few lawyers—only a very small percentage—acting in connection with these institutions do not treat the poor fairly, or in a way that would commend itself to any honourable practitioner, and that they use the offer of free legal advice as a bait, to work up a business, or to bring about litigation not in the interest of the client but in order to make costs. It is believed that there are not many lawyers, acting in connection with either the religious denominations or the settlements, who are guilty of such practices.

Those who have read Cordery on *Solicitors* will remember how often he refers to "the crushing power and influence of the attorney." If ever there was an opportunity for using that power for improper purposes, it would be found at these Poor Man's Lawyer Meetings, not to be exercised at the meeting, but subsequently, when the poor person is asked to attend at the ordinary office of the solicitor.

There is no co-operation or co-ordination between these Poor Man's Lawyer Meetings; nor are they in any way

federated or united. Each meeting is managed and carried on in a different way to any other. Each thinks its own particular method the best. Whether they are good or bad, whether they continue or cease to exist, depends solely on the qualifications, tenacity, and altruism of some particular lawyer, who is able to inspire other lawyers with enthusiasm, at any rate temporarily. Inspired enthusiasm, under such discouraging circumstances, to anyone who is accustomed to seeing legal work well done, does not usually last longer than six or twelve months. When that dominating lawyer gives up or dies, the meeting dies also, or dwindles to very small dimensions. Inspired enthusiasm has no root. One comes across its track in legal aid to the poor over and over again in the slums. Often, when enquiring at a mission why they have no Poor Man's Lawyer Meeting, one hears the old story:—How at first the lawyer came down punctually and regularly every week, full of enthusiasm, for six months; how then he came unpunctually, because of business duties; how, after, he became irregular, not turning up at all at some meetings, because his wife or children were ill or lonely; and how, finally, he gave up, and sent his clerk to do his duty; who also arrived on the scene with great enthusiasm, and gradually went through the same process of disillusionment as his employer had already gone through; and when that stage was reached the meeting was given up altogether. In one case in London a bright idea occurred to the religious organization which had been deserted by the lawyer and his clerk. The practice or connection was sold by way of a large rent to a speculative lawyer, who, under the guise of giving free legal advice to the poor in premises ordinarily used for religious or educational purposes, is to this day carrying on a fairly large business, details of which cannot be given, for the lawyer refused what is usually so readily and generously granted by altruistic lawyers—the opportunity of making a study of the meeting.

No co-operation between Poor Man's Lawyer Meetings.

The religious authority did not approve the lawyer or his methods, but altruistic lawyers for this outlandish locality could not be got, so it was thought that the increased help to the spiritual needs of the people would outweigh any damage to their legal and possibly bodily needs by the new arrangement. In short, the high rent helped the minister to carry on. But it was not cricket from the point of view of legal aid.

Poor Man's Lawyer Meetings generally unorganized.

The help, the comfort, ease of mind, and relief from worry given to the poor at these meetings is incalculable. The

bright happy faces of many of them as they leave is sufficient indication of relief. It is true that whether the advice is given by a barrister or solicitor, no very deep or brilliant opinions are given. There is no time for it. Probably the average time given to each person at a large meeting is five minutes. One lawyer who tries to use conciliation by means of letters, etc., averages ten minutes or more for each interview. It is believed that no other lawyer attempts conciliation to the same extent.

When a legal point is difficult the tendency is to advise there is no case—that it is useless to waste good money over bad. Over and over again one hears, at various Poor Man's Lawyer Meetings, poor tenants who have received notice to determine their tenancies, advised to do nothing until they get a court summons claiming possession. That is the quickest way to get on to another case. It seems to be forgotten that true defence lies in attack. And there is probably only one poor man's lawyer who habitually, in such cases, gives the landlord the written request specified in Sec. 11 of the Rent Act, 1920. In a great many cases the poor are quite properly advised they have no case, or that they are seeking a remedy on wrong lines, and that gives them relief from worry and uncertainty. Once a poor tenant consulted a poor man's lawyer about taking proceedings under the Rent Acts for the recovery of a halfpenny per week which he claimed his landlord had overcharged him for rent. He was advised that there was no case on the ground—"*De minimis non curat lex.*" Then it turned out that his real grievance was that his landlord would do no repairs, and the rain was coming through the roof—a substantial grievance which he did not know he could force his landlord to remedy, in the simplest possible manner, by getting a certificate from the sanitary authority under the Rent Acts.

There is immense scope to a poor man's lawyer, if he has sufficient time, in doing far-reaching good in troubles between husband and wife by way of conciliation, after the methods employed by the New York Legal Aid Society.

The Edinburgh Legal Dispensary practises conciliation.

It is almost universally true of Poor Man's Lawyer Meetings in England and Wales that conciliation out of court is practically unknown, and is never attempted. In Scotland, however, by the Edinburgh Legal Dispensary, and in the United States of America by the Legal Aid Societies, conciliation out of court in cases of poor persons has been developed to a high art, and is the main object in view. It has not been possible in England and Wales, partly because

conciliation necessitates the services of clerks and an office, partly because members of the Bar are not qualified and do not understand conciliation out of court, and could never be qualified unless they learnt a solicitor's business, the judges and those in authority having the same weakness, but chiefly because poor man's lawyers have no time for it. It is much simpler and quicker to give only *ad hoc* legal advice.

" Informal and individual legal aid work from its nature is transitory and fleeting. However much it may have aided the individual poor person here and there, it fails to affect the administration of justice; it affects nothing permanent on which to build, and when the enormous demand for legal assistance came, under modern conditions . . . it *collapsed*. Then arose organized legal aid work in America, which, *being possessed of permanence*, and rapidly *taking on the character of an institution*, steadily grew in every direction and dimension. . . . In America the office of a legal aid organization is like any ordinary private law office."[1]

American Legal Aid is organized.

The position in England, taking the country as a whole, in spite of our prating about justice and free legal advice to the poor, is that this sort of legal aid has also, under modern conditions, collapsed, leaving only an anæmic, attenuated make-believe, which we flourish in the eyes of the poor as " justice."

Poor Man's Lawyer Meetings held under the auspices of the religious denominations are usually held in mission halls, or at vestries, in the evening, the advice being generally given by a solicitor and being of an informal character, the solicitor taking up cases for litigation which he thinks will be successful. Generally, any poor person who requires advice can get it, whatever religious denomination he belongs to. The Salvation Army pay a firm of solicitors for acting for poor people who come to the Salvation Army for legal help. So far as is known, no other denomination does this directly, though charities in which they are interested may do so. There are societies connected with, and administered by, the Roman Catholics, who give legal aid, and do an immense amount of good to the poor in legal matters.

Legal Advice at Religious Institutions.

Most of the other religious denominations allow Poor Man's Lawyer Meetings to be held at some of their missions or vestries. The work is quite unorganized, and there is no

[1] R. H. Smith, *Justice and the Poor*.

co-operation between the various meetings belonging to the same denomination. In fact, at the headquarters of a denomination they have no knowledge, or very little knowledge, of what is being done in the way of legal aid at even its own missions and vestries. The work is local, and it would originate in purely local circumstances.

It costs the denomination nothing, except the use of a room at some time when that room is not otherwise wanted. It is believed that the greatest bulk of free legal advice to the poor in England and Wales is given indirectly by the religious denominations. There is, of course, no control over it. Whether the advice is good or bad, depends entirely upon the lawyer giving it, and perhaps even more upon his circumstances. The Congregationalists have some very good Poor Man's Lawyer Meetings in London.

An enquiry as to the exact amount of legal aid given through the denominations would take a long time ; because of the absence of all records, the spasmodic way in which such meetings must necessarily be originated and ended, and that the inspiration, working, and management is always local and never controlled or organized from headquarters, no great reliance could be placed on such an enquiry, even if it were made by each denomination.

These religious denominations through altruistic lawyers do give an enormous amount of legal haphazard charity to the poor. In no sense could it be claimed that that charity is regular, as of right, and full, or that, in fact, it is justice. No conciliation, after the methods of the New York Legal Aid Society or the Edinburgh Legal Dispensary, is, so far as can be discovered, ever attempted.

Legal Advice under the Provincial Law Societies.

The London Law Society takes no official interest in any Poor Man's Lawyer Meeting. But some of the Provincial Law Societies have been doing very valuable work, for a number of years, in this connection. The proportion of provincial law societies doing this work is, or was, very small, the most notable English provincial law societies being those at Manchester, Liverpool and Birmingham. Quite recently the Sussex Law Society has established a Poor Man's Lawyer Scheme, which is already doing good work, and which must have astonished the authors of that scheme, as proving the magnitude of the demand and the necessity for legal aid to the poor.

As would be expected when the control and administration of legal advice and aid is by a law society, a very high standard of efficiency has been developed. The advice

given and the methods used are excellent. But there is danger lest the aid given should be too limited. Professional etiquette, which naturally finds a congenial and stimulating home in a law society, is the great danger to the full development of legal aid to the poor under a law society. The Manchester Law Societies Legal Aid Organization will not, or at least would not, allow any lawyer giving free legal advice to be known by anything else than a letter of the alphabet or a number. The Sussex Law Society restricts its legal aid to cases sent by one Social Service Organization, and limits the number of letters which may be written to one.

As the law societies realize the position and the need of the poor for legal help, and especially if they definitely undertake to provide it, they offer the most hopeful—probably the only hopeful—means of providing the poor with necessary legal aid by a voluntary organized system. Given these two requisites, the difficulties created by professional etiquette will at once disappear. And this prophecy is made with full knowledge of the disastrous attempt, and failure, to solve the problem of legal aid in Sweden, through the same kind of channel.

Probably the provincial law societies are at the present time giving the largest quantity of free legal advice after the religious denominations.

Conciliation, which is more important than anything else in connection with legal aid to the poor, is, after the American method, or after the somewhat weaker methods adopted by the Edinburgh Legal Dispensary, really unknown, and never practised by the English law societies. The law societies, following the modern craze in England for rotas or panels, have, in some cases, formed separate rotas or panels even to deal with the question of advice. One law society has, (*a*) a list of lawyers prepared to interview and advise ; (*b*) a list of lawyers prepared to act in a consultative capacity; (*c*) a list of solicitors prepared to undertake correspondence and litigation. It is believed that that law society has found that every solicitor wishes to go on list (*b*) and that there is difficulty in getting solicitors for list (*c*). It is fatal to attempt to separate advice from correspondence. It is still more fatal, in the interests of the poor, to separate advice or correspondence from the ordinary and necessary work of a solicitor connected with interviews with clients. And if there could be anything more fatal or less to the interest of the poor, it would be a panel or rota of unselected —not elected—haphazard, and generally unskilled, volunteers.

Legal Advice at the Settlements.

Next in order of importance in connection with Poor Man's Lawyer Meetings come the settlements, which are organizations of social workers, often being university men and women, formed in the poorer districts or slums, for education and social service amongst the poor. There are settlements both in London and the provinces ; the London settlements being about twice the number of the provincial settlements. Less than a quarter of these settlements are, it is believed, in any way connected with legal aid to the poor. There are probably not more than twenty settlements in England that hold regular Poor Man's Lawyer Meetings.

Some, if not most, of the settlements belong to a federation called " The Federation of Settlements." This body has a good Press, and claims to represent the settlements. In fact, partly because of its crude method of electing its executive, which varies, partly because when a meeting is called or a circular is sent out, notice is not always given to those from whom opposition is expected, it has very little, if any, influence over the individual settlements, and as at present organized, does not much affect the position or social work amongst the poor, one way or the other. But the individual settlements, each in its own way, some denominational, others not, some connected with the universities, and some not, and all working under different rules, are doing, for purely altruistic motives, perchance under distressing and discouraging conditions, a really wonderful and magnificent social and educational work amongst the poor of our large towns.

The settlements in connection with legal aid to the poor, through Poor Man's Lawyer Meetings, are important, not because of the volume of work done at these institutions, but because, as some of them keep records of a sort, and as they are more permanent and accessible than the meetings carried on in connection with the religious denominations, one is able there to make a study of the problem of legal advice to the poor. There is no opportunity of studying there civil litigation, or criminal proceedings, about which few settlement lawyers have had any experience. There is no co-operation between the various meetings, very little organization at most of them ; and to a less extent they are affected by the same difficulties as affect the meetings held under the religious denominations.

Each settlement meeting is different to any other in its procedure, methods and circumstances. Six of the large

Poor Man's Lawyer Meetings at settlements may be taken as types.

(*a*) *Mansfield House University Settlement* at Canning Town, is described by American authors as being the mother of Poor Man's Lawyer Meetings. The first of such meetings was held there. In after years a Legal Aid Society was founded in New York based on the Mansfield House idea.

Probably Mansfield House has the best Poor Man's Lawyer Meeting in London. For a settlement, its organization is good. There is an excellent lay secretary and at least two other lay helpers who sort out the clients and see they are shown into the lawyer's rooms without delay. Occasionally letters are written there. And there is generally a shorthand clerk to take and copy letters. There is a large waiting-room capable of seating one hundred people or more; and each lawyer gives advice in a separate room. The principal lawyer—a solicitor—is excellent, very capable and sympathetic in his work. In all cases where litigation is advised, the client is asked to go to his own solicitor or to any solicitor he knows. If he has none, some of the cases for which litigation is advised are taken up by one of the lawyers giving advice, and some are sent to some young outside lawyer.

On each lawyer's table is a box inviting donations from clients. These donations are taken by the settlement organization for expenses. The lawyers get no part of them, and do not like the idea of donations, though voluntary. It is not unusual to hear a lawyer suggest to a client that there is no need to put anything in the box. The poor who come for advice at the present time come principally, in the order named, over matters relating to the Rent Restriction Acts (especially as to claims for possession, repairs, nuisance and annoyance, breach of the implied covenant for quiet enjoyment), accident cases (especially under the Workmen's Compensation Act), matrimonial cases (especially maintenance and separation), wages claims, affiliation, disputes between neighbours ending in assaults or slander or intimidation, guardianship of children, disputes about very small wills, or the division of small estates on death, money-lenders' claims, debts, and enquiries as to what they are to do, (i) as to issuing process in the courts, (ii) in filing defences or counterclaims, (iii) as to their behaviour and the procedure when they get into court. Almost any point of law may crop up at a Poor Man's Lawyer Meeting. Once a poor man's lawyer was making a study of these meetings,

and he was allowed to sit at the table of a young barrister giving free legal advice to the poor at a famous settlement. A very poor old lady came in requiring advice as to a difficult point arising out of restrictive or negative covenants in leases, and the consideration whether they had been imposed as part of a building scheme, etc. Without referring to any books, the young barrister was giving such shocking legal advice, that the poor man's lawyer felt he could not sit there silent, so he got up and abruptly left the settlement, before the old lady had received all the charity that was then available.

Lack of funds and time alone prevent this meeting from becoming almost perfect. It is the outstanding London Poor Man's Lawyer Meeting, and clients come to it from all parts of London.

(*b*) *Cambridge House University Settlement* in Camberwell has a very different type of Poor Man's Lawyer Meeting. The lawyers giving advice are—with one exception—entirely composed of very young members of the Bar. A solicitor is not permitted to give advice at Cambridge House. Good work is done by these barristers, especially after they have had two years' practice at the work. Only verbal advice is given. No books are referred to. Only one room is used for giving advice, in which are three tables, at which three lawyers give advice, all at the same time. Donations from clients are not asked for.

There is, or was, a very good system of recording or registering each case that came in, invented, and two years or more ago carried out by a young barrister, the grandson of a well-remembered High Court judge, with a brilliant future before him. At that time good advice, and great enthusiasm, was being given at Cambridge House by this young member of the Bar. Probably he is too busy now to be a poor man's lawyer, and has gone the way of the majority of the men who are doing well at the Bar. There is a very charming modesty and refinement about all these young altruistic barristers ; and unquestionably they do their best. They seem to have learnt voice modulation, so that in spite of the three advising tables in one room there is not the same deafening din as one has found at some other settlements. One of them, who was so courteous as to allow a strange lawyer to sit at his table in order to study the problem, begged the stranger to give him a kick *sub rosa*, or under the table, whenever he went wrong in giving advice. That kick was not given. But in one difficult case, where,

in fact, bad advice in law had been given, the stranger's advice was asked, and on his suggesting that the authorities should be consulted, the only relevant book in the settlement was a *Stone's Justices' Manual* over ten years old. It was charity—not justice.

If litigation is advised a note is given the client giving him the name and address of a solicitor who takes up court cases —or some of them—for clients so sent to him. According to one of the barristers who used to be at Cambridge House, this solicitor does very well the work of the poor which he takes up. Some financial help is or was given to the solicitor, by way of the payment of the rent of his offices or otherwise.

All barristers, when giving free advice to the poor, are very nervous about Bar etiquette, which to a large extent destroys their usefulness when acting in that capacity. In no circumstances is such *ad hoc* advice equal to that of an ordinary solicitor.

(*c*) *Toynbee Hall*, in Aldgate, has again a different type of Poor Man's Lawyer Meeting. Its foundation and existence depend upon the devotion and altruism of one solicitor of the family lawyer type, who in his own private work has probably never been in a police or county court, and would probably always go to counsel if he had to take up litigation, and who keeps his gratuitous work at Toynbee Hall quite distinct from his ordinary practice. There is, or was, very little organization of the Poor Man's Lawyer Meeting at Toynbee. Two years or more ago there was only one consulting room, in which were three tables, with three lawyers or semi-lawyers, all giving advice at the same time. Nor was there any clerk or door-keeper or other person to show clients in ; hardly ever were books consulted ; and no records were made, except as to those cases where aid was going to be given as to litigation. Sometimes a meeting used to last until after eleven at night. It is said that the work is now much more quickly done, because there are now five tables in the one consulting room, with five people giving advice at the same time. It was charity—not justice.

In connection with this Poor Man's Lawyer Meeting is a committee, which receives subscriptions and donations, for the purpose of assisting the poor in civil litigation approved by the committee, and for that purpose the committee employs a county court solicitor, guaranteeing him, it is understood, against loss in the event of unsuccessful litigation. But the amount of litigious work done, and the result, is very small

indeed. The figures for 1921 and 1920 were—redress obtained without litigation, 18 and 25 ; actions won, 5 and 15 ; actions lost, 4 and 1. And to get this result, the legal expenses payable by the committee came to £56 in 1921. The work of this committee, taking selected cases as it does, is too trivial to act as any guide. Taken as a whole, it was charity run riot.

No letters are, or were, written at the Toynbee Hall Poor Man's Lawyer Meeting, nor was any attempt made at conciliation, apart from the paid work done by the solicitor employed by the committee. The poor clients are, or were, not asked to make donations. Students are, or were, used to give advice.

(*d*) *Browning Settlement, London,* has an old-established Poor Man's Lawyer Meeting, at which one finds two different and distinct types of meeting. In one week one will find there the solicitor who has given this sort of free legal advice for a longer time than any other solicitor. He is of the altruistic type of lawyer, and is a very amusing original character. He gives very useful advice, of a practical character. He does not take up any litigation for the poor, and discourages litigation. On alternate weeks another solicitor, or his clerk, gives the poor free legal advice at this meeting, and he himself takes up the litigation arising out of it. At Browning Settlement no books are consulted, no letters written, conciliation, except *ex parte,* is not attempted. No records are, or were, kept. Donation boxes are placed on the consulting-room table. It is said that letters requesting legal advice come to the Warden of this settlement from poor people in all parts of England. The Rev. J. W. Graves, the Warden, who knows and has had experience in the United States of America, himself does much useful work in giving informal advice to the poor, and has greatly helped those who were trying to bring about reform in the administration of justice affecting poor persons.

(*e*) *Mary Ward Settlement, London,* has a Poor Man's Lawyer Meeting of the one-man type. The solicitor who gives the free advice conducts it in his own way, and takes up himself the civil litigation which he considers ought to be taken up. It is understood that the work is well done.

(*f*) *Bermondsey Settlement, Bermondsey,* was one of the first settlements to start a Poor Man's Lawyer Meeting. Its history, with regard to legal aid, illustrates the fact that legal aid and Poor Man's Lawyer Meetings at settlements, depend entirely for their character, and their existence,

upon the lawyers alone. One of the residents at the settlement, a solicitor, twenty or more years ago started a Poor Man's Lawyer Meeting; after a few years a solicitor, now a member of the present government, continued giving free legal advice at this meeting, and took up litigation arising out of it. After a time he got too busy to come down to the meeting, and the Rev. Dr. Scott Lidgett, the Warden, and the outstanding figure in the settlement world, would then send poor people to the office of this solicitor. After some years the Warden's only son qualified as a solicitor, getting first class honours, and for some years he gave the poor free legal advice *at any time* when they wanted help. The war came, and John C. Lidgett gave up his life for his country, since when, until recently, there has been no Poor Man's Lawyer Meeting at Bermondsey Settlement.

It will be seen that, though there is more permanence about Poor Man's Lawyer Meetings at the settlements, yet they equally with such meetings associated with the religious denominations, have no co-operation between themselves, and very little organization, the advice given, owing to the general neglect to consult books, is not always reliable, and is never very deep. Essentially it is haphazard, unorganized charity, depending for its value upon the particular lawyer giving the advice, or much more upon his private circumstances, and the amount of time he can spare for charity. At hardly any meeting is conciliation attempted. At no meeting are there facilities—the proper organization and staff of a solicitor's office—for attempting conciliation after the American manner: nor, with the exception of one poor man's lawyer, has such conciliation ever, it is believed, been attempted in England. In Scotland, at the Edinburgh Legal Dispensary, there is an excellent system of conciliation out of court by the lawyers acting as poor man's lawyers.

Legal Advice by Trade Unions.

Some, but by no means all, trade unions employ a solicitor to give legal advice to their members. The solicitor is generally a full-time paid official of the union. And the advice (and other legal aid) is given as one of the benefits receivable by the members, and is of course confined to members only. The volume of legal advice thus given is large. But as the matter is not controlled by the Trade Union General Council, and as that Council has no knowledge at all of how far, or which, trade unions are giving legal aid, it is difficult to get reliable information. Indeed, one trade union does not know what other trade unions are doing in this direction. And no trade union, possibly

because it may be thought the Law Society would object, is at all anxious to give information to an enquirer.

Legal Advice by Political Parties.

Political Parties give legal advice and legal aid in certain constituencies. This is done, not as a general rule, but, as in the case of trade unions, is arranged locally in and by all three political parties in certain constituencies. If one enquires at the central association or headquarters of any political party, one will be told that nothing is known about it at the central organization, and that if it is done—which is not admitted—it is done locally, and is a matter entirely for local decision. It is, in fact, done by all the political parties. In Bermondsey, which is represented by a Labour M.P., a Poor Man's Lawyer Meeting takes place at the local political headquarters. Almost the only survivor from the Liberal debacle in London at the last general election was a Liberal M.P., who for years has made it a feature of his work in his constituency to arrange for the provision of legal advice to his constituents at his local political headquarters. A Member of the present Government representing one of the most pronounced working-class constituencies has for some time carried on at the local Conservative Club in his constituency a Poor Man's Lawyer Meeting and, as he is a solicitor, he is able to do, and in fact does, any litigation arising out of the meeting, or required by one of his constituents. The worst feature about legal aid to the poor by politicians is that almost invariably it is given at the political headquarters, for the purpose of making the party and candidate popular. Such aid is often referred to and advertized in the local party publications: and its real object must be to catch votes. It would seem possible that there is a certain type of politician who is content to take advantage of the deplorable condition in legal matters (especially under modern conditions) of the poorer members of the community, for the purpose of catching votes. In the July, 1924, magazine of a political party appears the following public and general communication :—" You should forward full particulars to the X office . . . or, better still, call, and the X party will *take up* your case, if necessary to the extent of *going into court* on your behalf." Such a notice shows not only the need of the poor for legal help, but how that need is being exploited, and can be used, for political purposes. One wonders how such a method of giving legal advice can be reconciled with that peculiar relationship between adviser and advised, involving *complete trust, complete independence,* and which is *essential for the*

maintenance of honesty and skill, and was so strongly insisted upon in the Report of the Poor Persons Rules Committee, presided over by Mr. Justice P. O. Lawrence, that a State system of legal aid was ruled out, because these peculiar relationships could then with difficulty survive.

The result of elections, in constituencies where legal aid is given by politicians, shows that it pays. The party which most effectively gives legal aid, in a poor and working-class constituency, is generally—other things being equal—successful at the polls. The granting of this legal aid flagrantly in political quarters, and ostensibly by or on behalf of politicians, comes very near bribery and corruption. That it should be done in places by all the three political parties shows conclusively to what desperate straits the poor are reduced by the present denial to them of justice when they are poor. One does not find politicians at their political quarters giving the poor medical help or advice, or education, for the Government has made provision for health and education, and there is no need in that direction. Practically the Government has made no provision for the legal needs of the poor, except here or there as a charity.

Legal Advice by Charities.

Some charities, like the Charity Organization Society, or branches of it, have from time to time, in a spasmodic manner, organized Poor Man's Lawyer Meetings for certain localities. Other charities to meet the great need for legal help have employed solicitors to advise or help the poor. But no very great work in this direction is carried on by English charities. What is done is casual, and more or less haphazard. For example, the Charity Organization Society, at its head office, did not know what its local branches were doing, and was quite ignorant of a really useful piece of work in connection with legal aid to the poor done at Brighton during the war, by the local Charity Organization Society.

Legal Advice by Individual Lawyers.

A very great deal of legal advice and legal aid is given to the poor by the general body of solicitors in their individual capacity, when they come across cases of poor persons in their ordinary business. This work is almost universally done by solicitors in a very quiet, unobtrusive, way. And it is because the majority of solicitors are accustomed in their ordinary business so often to lend a hand, and generally a full hand, to the poor, that they find it so very difficult to realize that all their help, and all the other help now provided, from whatever source it may come, still leaves the bulk of the legal needs of the poor without any provision for making justice, or its administration, equal in cases of

poverty. The members of the Bar, except during occasional fleeting moments in court, are not in a position to appreciate the needs of the poor in legal matters, nor do they have the same opportunity of helping the poor.

Poor Man's Lawyer Meetings run by individual Solicitors apart from organizations.

When one finds a Poor Man's Lawyer Meeting run by a solicitor apart from and unconnected with any organization, it is generally a case of a police or county court practitioner giving free legal advice as a bait to get court cases.

English Legal Aid Societies.

In London in a main street is a brass plate on the front door of a building, on which is engraved " Legal Aid Society." Written in very large letters on part of the building are the words, " All classes of accidents taken up. Advice given in all matters." On another board in a main street in London, also in very large letters, is the following notice : " LAW—Advice given free upon accident, workman's compensation, and all other cases, by solicitor, attending every X evening." A few months ago a little child was injured in a street accident and taken to a hospital. On the same day that the accident happened a runner from a Legal Aid Society called on the father of the child and offered to take legal proceedings gratuitously. After some months spent in trying to get, without the expense of litigation, compensation and their costs out of the owner of the motor which did the damage, the papers were returned to the child's father with an intimation that nothing could be got and that the owner of the motor was not worth powder and shot. It is said that speculative solicitors, or their clerks, are generally behind the English legal aid societies.

It will be noticed that all the so-called legal aid societies of this type lay emphasis on accident cases. That is because, in litigation under the Workman's Compensation Act, the workman's costs (which must now, by recent legislation, be set out in the agreement of settlement) are reasonably certain to be payable by the employer : and in other accident cases, especially those caused by motor cars, which are invariably insured, the insurance company, rather than have an action brought against it by a poor man, would prefer to pay some compensation, and a substantial sum for costs. Sometimes the worst kind of legal aid society, without litigation, is able to recover payment of a larger sum for costs or expenses than the amount paid for compensation. It is very common for such a legal aid societies' runner or clerk to hear of an accident, and to see the injured person at his home or at the hospital, on the same day that the accident occurs. The methods by which instructions are got vary very little.

The injured person is generally told that his case will be taken up by the "celebrated" legal aid society or by a "celebrated" solicitor, without any charge whatever to him, other than 10 per cent. on the amount recovered, and that all he has to do to get this benefit is to sign written instructions. Then the person causing the injury is written to, and often a large claim for damages is made, an intimation being given that the injured person is poor, and that a settlement without litigation might be arranged. The essence of any settlement is that the injured person is to have his costs paid by the other side; and sometimes these settlements result in more being paid to the legal aid society or the injured man's solicitor than the injured man actually receives. Where an insurance company represents the man who has caused the injury, it is recognized that, when dealing with an English so-called legal aid society or the worst type of speculative solicitor, the minimum sum (irrespective of the work done) which must be paid for the costs and expenses of the solicitor by the company is £6 6s. if the injured person receives £10 compensation, and £10 10s. if the injured person receives £20 compensation.

In an accident case decided in the County Court in 1925, where the real defendant was an insurance company, the injured person got a verdict for £34 damages, and the taxed costs of his solicitor came to £70. Of course, no settlement can be come to without the injured person agreeing, willingly or unwillingly, to the amount of compensation he receives. But he knows very little about the sum paid to the legal aid society for expenses and costs, except that arrangements have been made whereby he will be saved the payment of any costs. In all classes of work by these bogus legal aid societies the poor and the ignorant are shockingly victimized, and unquestionably, if the facts could be proved, they would be brought within the meshes of the law. But they are so experienced in evading the law, take such precautions to meet any trouble, by the written instructions they get from their ignorant clients, that bogus legal aid societies and low-class solicitors are still able to flourish.

In America the word "Legal Aid Society" is synonymous with all that is honourable. In England the name has acquired a very bad reputation.

CHAPTER IV

THE PRESENT POSITION OF THE POOR IN ENGLAND AND WALES, IN THE CIVIL COURTS

The County Court—Court fees—Out-of-pocket expenses—Pleadings—Representation by a lawyer in court—The Police Courts—The High Court including Assizes—The Poor Persons Rules and the out-of-pocket expenses—Conducting Solicitors—Supreme Court and House of Lords—Two tests before civil aid granted—English rigid poverty test—Probabilis causa litigandi test—Summary of defects in Poor Persons Rules.

The County Courts.

THE bulk of the civil litigation of the poor in England and Wales takes place in the County Court. These courts, of comparatively recent date in their present form and jurisdiction, have jurisdiction (1) over matters when the claim does not exceed £100 in amount, which would, in the High Court, be brought in the King's Bench Division; (2) over land the rental of which does not exceed £100; (3) over matters where the value of the subject matter does not exceed £500, which would, in the High Court, be brought in the Chancery Division; (4) in certain cases in Admiralty, bankruptcy, etc., under special Statutes. There are certain exceptions to this jurisdiction, such as:—actions for libel, slander, breach of promise of marriage, etc.—as to which it would seem a mistake not to give the County Courts limited jurisdiction. It is therefore obvious that, except as to matrimonial, libel, slander, or breach of promise of marriage, suits, the great majority of the civil litigation of the poor must now take place in the County Courts.

No legal aid by the Government or authorities is given to the poor—even if they are destitute—in any shape or form in the County Court.

Compared with the High Court, or Assizes, the procedure in County Courts is very much simpler, the administration of justice is speedy, and it is permanently and continuously local, bringing, as in Anglo-Saxon times, justice to the doors of the poor; and what is, perhaps, of most importance, the costs, and the out-of-pocket expenses are considerably less than such expenses in the High Court. Except as to Order XIV, Proceedings in the High Court, the date from the issue of process until judgment, should, in the County Court, be

less than one quarter of the time taken in the High Court. Solicitors have a right of audience in the County Court. And if they act there as advocates, instead of briefing counsel, there is a considerable saving in expense. Even if counsel is briefed in the County Court, the total costs are much less than they are if a case is tried in the High Court. High Court costs were estimated by Lord Carson, in introducing his Moneylenders Bill in the House of Lords in 1925, as being, on an average, £200 for each party to High Court proceedings; and for that reason Lord Carson advocated that all moneylenders' claims should be tried in the County Court. There is also an absence of formality: in the country, there is much local knowledge: and from the point of view of the poor the County Courts are excellent in many ways. But even in the County Courts there is a real denial of justice to those poor persons who cannot afford, (*a*) to pay court fees, (*b*) to pay out-of-pocket expenses, such as witness fees, (*c*) to pay a solicitor to draw their pleadings, or advise as to interlocutory proceedings—especially as to counterclaims, and (*d*) to employ an advocate, whether a solicitor, or counsel properly instructed by a solicitor.

Court Fees.

The County Court officials—judges and registrars—would have very little knowledge about the poor who are unable to pay court fees. The average County Court official, will say if he is asked about it, "Oh, the poor manage to get the money somehow." But they really cannot know much about it, because the poor unable to pay County Court fees do not come near the County Courts. The poor know, that as no legal aid is given there, it is quite useless under such circumstances to go to the Court.

Out-of-pocket expenses and Pleadings.

Only a poor man's lawyer could have any real knowledge how very difficult, and sometimes impossible, it is for the poor to find the necessary money for witness fees, travelling expenses, and other out-of-pocket expenses. In 1925 a poor man's lawyer advised a poor woman whose landlord was taking ejectment proceedings against her, that she had a good case if she could afford to take to Court three or four independent witnesses. Her case was reached last on the day of hearing. It was so late that the judge offered to adjourn the case, or if it would not take long, to try it that afternoon. The poor woman had just managed to scrape together enough to pay her witnesses for the one day. She knew it would be impossible to pay them for another day. So she elected to then go to trial. Judgment was given against her, without half the witnesses having been called.

In the early stages of the same case the poor man's lawyer advised the poor woman to go to the County Court office, and to ask the clerks or the registrar there to draw a counter-claim for her. She came back and reported that the clerks could not understand the point. The poor man's lawyer wrote the point down—it was highly technical—and the poor woman went again to the County Court office. The clerks then said that they could not draw the counter-claim, and that it was a matter that must be dealt with by the judge. And when she got into Court the judge had no time for counter-claims—nor was it, of course, his business to draw pleadings.

Lawyers, and those in authority, so often say " the poor can go to the County Court office and be informed there what they are to do, and they can get help there." A poor man's lawyer has made rather elaborate tests, extending over a period of twelve months, as to that. The duty of a poor man's lawyer is, strictly, only to give legal advice. In cases of litigation, where poor people have come for advice as to the conduct of the litigation, the poor man's lawyer has constantly sent poor people to various County Court offices to ask them to draw pleadings, and so that there might be no mistake, he has written down the point, and what was wanted. Many poor persons have reported they could get no help from the officials. In no single case has that poor man's lawyer been able to hear of any pleading, in fact, having been drawn by the officials. But on a few occasions he has had moderate success when he has written down the legal point and a short argument, which sometimes the poor person has been able to show the judge or registrar in court —not ostensibly, of course, but only when the judge, being puzzled by some legal point, and hearing that some poor man's lawyer had advised, naturally wished to know what the point and advice were. Difficult points of law arise in small cases, as often as they do in large cases. And probably there is more technical difficulty over cases for poor persons who have not complied with the precedents, than there is in ordinary litigation. It would be an advantage to poor persons if the jurisdiction of registrars in the County Courts were extended.

Representation by a lawyer in Court.

The rules and procedure in all courts are so highly technical, and the atmosphere there is so strange and unusual to any lay person, that practically everyone who can afford it is represented in court by a solicitor, or by counsel properly instructed by a solicitor. If an ordinary person who can

afford to pay for such services appears in person in court, the assumption is that such person is a lunatic or crank. It is quite true that the judges give anyone appearing in person help, latitude, and rope enough to hang himself. And it is because of the anxiety of the judges to give ample scope and opportunity to such a person that one often hears lawyers claiming that an unrepresented person gets on very well. The true test is whether or not he wins his case. Great liberty is given to such a person, and he is allowed to do and say things which a lawyer representing him could not do or say. But as he is incapable of appreciating the points, even as to facts, and still more so as to law, such a person invariably directs his energies to irrelevant matters of detail.

Many people, especially women, are quite incapacitated by the mere suggestion that they should stand up in open court and argue and conduct a law case.

It is a well-known tradition amongst lawyers that no man, though a lawyer, should represent himself, but should be represented as to legal business by another lawyer. The reason for this rule is that in a matter personally affecting a lawyer he cannot take an ordinary impartial view of the case, and is therefore precluded from doing justice to it.

Mr. R. Heber Smith considers that the office of the attorney (solicitor) is indispensable to the administration of justice, and vital to the well-being of the court. In one of the first Year Books the Chief Justice said, "B. loses his money because he hadn't a good lawyer." It is practically impossible for a layman to conduct even the simplest sort of case under the existing rules and procedure. At every stage the attorney supplies the motive power; without him the judicial machinery would never move. The lawyer is as necessary as the engineer or the doctor; each is a specialist who applies the laws he knows for the benefit of the community. Without uprooting our entire administration of law it would be as impossible to abolish the lawyer as it would be the judge. "With all reformation of procedure and reorganization of courts the true and essential functions of the attorney will remain. . . . This great underlying problem cannot be summarily disposed of."[1]

The greatest trouble of the unrepresented poor in our courts, in spite of the patience and courtesy of English judges, is that they cannot properly bring out the vital point of the case, but get lost in a multitude of detail and irrelevant

[1] R. H. Smith, *Justice and the Poor.*

matter, and they are unable, by cross-examination, to test the truth of the evidence of the other side. If solicitors had a right of audience in all the courts, or if there were fusion between the two branches of the legal profession, the problem of giving the poor court aid would be much easier and less costly.

It has been said that the judge at the trial can protect an unrepresented litigant. On the face of that proposition it is obvious that an impartial judge cannot, at the trial, act as judge, and also as advocate for one of the parties. In cases of poor persons, he does not know the facts, has no material for cross-examination, and generally has to allow a party appearing in person to go his own road and damage his own case. It is only necessary to go into a County Court and to watch poor persons trying to conduct their own cases, in order to realize the hopeless position of muddle that then arises.

The Police Courts.

Many matters of a civil nature, such as maintenance and desertion in cases of husband and wife, affiliation proceedings, claims between master and servant, custody of children, etc., come before the Police Courts for hearing. The fees payable are very moderate, indeed, practically no pleadings are required, and the procedure is simple. No legal aid or help is provided by the Government or Authorities to assist poor persons to bring or defend such semi-civil proceedings in the courts of summary jurisdiction. There is no method, apart from the poor man's lawyer, whereby conciliation out of court, which would be especially useful in such cases, can be attempted.

The greatest legal need of the poor in this type of case is to be properly represented by a solicitor during the hearing in court.

It is well worth considering whether it is not advisable, in the interest of justice, that all this semi-civil jurisdiction should be transferred to the County Courts, the Registrars of the County Court being given—subject to an appeal to the judge—power to adjudicate upon all these civil rights of the poor. The Registrar of a County Court is a trained lawyer. An ordinary magistrate is not usually a lawyer. The atmosphere and publicity of a Police Court are not suitable for cases between husband and wife, parent and child, or master and servant.

The High Court, including Assizes.

Local civil cases in the provinces, which would, if in London, be triable at the High Court of Justice, are, or may be, triable at Assizes, which are courts held locally and periodically in the provinces, for the trial locally of (*inter*

alia) Civil High Court actions. Criminal proceedings are also triable at Assizes. And the result is that a poor person, and his witnesses, might be kept, in some cases, waiting about at the assize town for his case to be heard, longer than if it were tried in London.

A court has an inherent right to ask counsel in court to take up a case for a poor person. In civil cases this power is hardly ever exercised. And as will be seen later, counsel, not properly instructed by a solicitor, is practically useless. Apart from that, the only legal aid given to poor persons in the High Court is given under the Poor Persons Rules, which came into force in 1914.

The Poor Persons Rules.

These rules originated in discussions between the Bar (which wanted its young members to get experience, education and advertisement), the Law Society, as representing solicitors (which disliked officials and officialism more than anything else), and the Government (whose only object was to spend as little money as possible on legal aid), whereby a Poor Persons' Department was created with a few minor officials at a total annual cost of only £3,000. The Bar was satisfied because youngsters could take up cases for the poor, contrary to the Statute of 11 Henry VII., Cap. 12, and the Bar custom of devilling. The Law Society was satisfied because there had only been created a minor department, whose duty it was merely to act as a clearing-house, without the power to give advice or to attempt conciliation. The Government was quite well satisfied, for it had created a really innocuous department at a yearly cost of only £3,000, and beyond remitting court fees in a few exceptional, limited cases, had shifted the whole burden of legal aid to the poor in the High Court on to the shoulders of one section of the community, *viz.*, lawyers. At first, before the out-of-pocket expenses payable to the conducting solicitor were cut down, everyone seems to have been satisfied, except the poor, for whom this so-called reform was supposed to be made. Since the inception of this procedure in 1914 two Government committees, composed primarily of members of the Bar, have twice been appointed to report and make recommendations on the system. At the present time, in the year 1925, there are over 400 cases of poor persons who have been admitted to take proceedings under the rules, and whose cases have been favourably reported upon by the reporting solicitors, but which it is impossible to bring before the courts, because there are no conducting solicitors willing to take these cases up.

Apart from the Poor Prisoners Defence Act, 1903, the only legal aid given to the poor by the Government in this country is under the Poor Persons Rules, and the form which such legal aid takes, lies only in the remission of court fees. The whole of the legal aid given to the poor in the High Court is, in fact, given by the legal profession, except as to the remission of court fees. There does not seem ever to have been present in the minds of those responsible for making these rules and their amendments, that the poor had a constitutional right to the equal administration of justice, and that the necessary and only object to aim for was to give proper legal aid in every case where such aid was necessary, in order to secure justice in the particular case. Instead of having that in view, the matter seems to have been considered solely from the points of view of education, legal etiquette, privilege, and ruthless economy. Apart from the few officials at the Poor Persons' Department, the system was intended to make the legal profession give the legal aid, and do the work, required by the poor in the High Courts, gratuitously.

Lists of volunteers to act in the capacity of (1) counsel, (2) solicitors to report on cases, and (3) solicitors to actually conduct, or carry through the litigation, were to be kept. No trouble has arisen about the quantity of counsel available, though there has been much adverse criticism about their quality. No trouble has arisen about the reporting solicitors, who have really a very soft job. The work of the reporting solicitor is very much of the same character as the work of counsel. It lasts a very short time. There is no continuous responsibility, and hardly ever could there be any out-of-pocket expenses to meet. All the reporting solicitors are men of high standing. One often finds that the old-fashioned family and conveyancing solicitor is quite willing to act as a reporting solicitor. Apart from the large London agency firms (who, because of their admirable organization and large staff, would find it easier to conduct a hundred poor persons' cases, than a family solicitor would find it to conduct one such case), one does not find good-class solicitors conducting poor persons' cases; though it is very common to find them acting as reporting solicitors. The trouble as to working these Rules has arisen only in connection with conducting solicitors. On the 5th August, 1925, the Attorney-General, in reply to a question in the House of Commons, admitted that it was impossible to bring some poor persons' cases before the courts, because of the dearth of conducting

solicitors. The conducting solicitor is the key to the solution of the particular problem covered by the Poor Persons Rules.

Since 1919 the conducting solicitor has not been treated fairly. The Report of Mr. Justice P. O. Lawrence's committee (Command Paper 430) advised (and the advice was subsequently acted on) that the conducting solicitor should not receive payment of the whole of his out-of-pocket expenses, and recommended that he should himself pay such out-of-pocket expenses as were incurred for stationery, clerk's time when taken away from other business, and copying. The same Report estimated the out-of-pocket expenses, other than court fees, in an average matrimonial case, at £10, and in an average nullity suit at £25. And the secretary to the Poor Persons' Department has estimated the additional out-of-pocket expenses for service in the colonies at £5, and for obtaining evidence in the colonies at £20. The out-of-pocket expenses in some ordinary matrimonial suits might therefore come to £30, and in some ordinary nullity suits to £50. In addition it was decided, (*a*) in Grinham *v.* Grinham and Pascoe (1916, P. 1) that the Poor Persons Rules did not preclude the practice of the Divorce Court in regard to security for a wife's costs from being followed, even though the husband was an admitted poor person, (*b*) in Hope *v.* Hope (1915, P. 125) that even where a husband is proceeding as a poor person in an appeal from justices under the Summary Jurisdiction (Married Women) Act, 1895, he is not, though a poor person admitted under the Poor Persons Rules, relieved from the obligation to pay his wife's costs. There may therefore be a further sum of £20 or £30 which a husband in matrimonial suits, though a poor person, might have to provide, before he can proceed with the litigation.

The out-of-pocket expenses of poor persons under the Poor Persons Rules.

In the same Report of Mr. Justice P. O. Lawrence's committee (Command Paper 430) it was found as a fact that the reason why there only came to trial one quarter of the applications granted to poor persons to proceed under the Rules, was *mainly due* to the Poor Persons being unable to find the necessary out-of-pocket expenses to enable them to start or proceed with their cases. And yet in spite of these findings, and in spite of the fact that the out-of-pocket expenses of a poor person (quite apart from the obligation of a husband to pay his wife's costs) may amount to £30 or £50, and always amount in nullity suits to £20, the Report of the second committee of Mr. Justice P. O. Lawrence (Command Paper 2358) expressly recommends that " Rules of

Court should fix the *maximum* amount of deposit . . . any applicant to make at £5, and in special circumstances the further sum of £5." The chairman of the Special Committee, appointed by the Law Society to consider the Report, said at the annual meeting of the Law Society in July, 1925, "The solicitor would get his out-of-pocket expenses, *provided, of course, there were sufficient funds.* In divorce cases there would be a deposit of £5, in special cases possibly of £10 ; and solicitors would be under no obligation to provide any of the expense."

Clearly these propositions are contradictory. The result is, that if conducting solicitors do not, in many cases, pay substantial sums out of their own pockets for the High Court litigation of Poor Persons admitted under the rules, the number of poor persons able to get relief or justice will be very considerably reduced. Is it at all remarkable that the supply of conducting solicitors is insufficient ?

The Poor Persons Rules, 1914, contemplated, in connection with High Court litigation by poor persons, the formation out of public monies, of a fund for the payment of the out-of-pocket expenses of poor persons, other than court fees. But such fund has never been formed. The Report of Mr. Justice P. O. Lawrence's committee (Command Paper 430) expressed the opinion that *unless a fund* were formed for the payment of a poor person's out-of-pocket expenses, *the really poor,* or *quite destitute* persons, *had no chance* of availing themselves of the Poor Persons Rules. In spite of these recommendations, we find in the Report of Mr. Justice P. O. Lawrence's second committee, not only no reference to the fund, and the consequences which must result from its absence, but we also find that apparently poor persons who could find more than £10 for out-of-pocket expenses are expressly precluded from doing so. Is it remarkable that the supply of conducting solicitors, volunteers as they are, is gradually vanishing ?

The conducting solicitor must not only give his own personal services or time gratuitously, as a doctor does in a medical hospital, but he has to find out of his own pocket the material necessary for doing his work (such as stationery), and the services of paid servants (such as clerks) which neither medical men, nor any other man giving voluntary service, is expected or *allowed* to find. Mr. Justice P. O. Lawrence's first committee estimated these out-of-pocket expenses at £5 for each matrimonial case. Nor does the conducting solicitor get any reward as a medical man does,

by way of experience which will help him in his ordinary practice, advertisement, and often honorary distinction. Moreover, under the Poor Persons Rules a conducting solicitor, though acting gratuitously, is liable in damages for any act of forgetfulness or negligence by himself or his clerk. Further, a conducting solicitor having once taken up a case for a poor person, is precluded by the Rules from giving up the case, however objectionable the poor person may be, or however difficult and expensive the case may be to conduct, without the express sanction of the court. Taking the Rules as a whole, it would be difficult to draw Rules more unfair, unreasonable, and unworkable, so far as the conducting solicitor is concerned. And unless he is indemnified from the payment of all out-of-pocket expenses, including reasonable office-running expenses, no voluntary system, whether it is controlled by a department, or by a law society, has the least chance of permanent success. The Law Society, by continuous circulars to solicitors, and the Poor Persons' Department also, had before July, 1923, bombarded solicitors, requesting them to come forward in order to conduct cases for the poor under these Rules. No greater pressure can be exercised now by the law societies than was exercised then. Any scheme which does not at least provide for the whole of the out-of-pocket expenses of the conducting solicitor is, and must be, doomed, no matter by whom such scheme is administered or controlled.

Conducting Solicitor are in entirely different position to any other lawyer acting for the poor.

The Poor Persons Rules do not apply to bankruptcy or criminal proceedings, except (1) to applications to Justices to state a case and the hearing, and (2) applications for certiorari, mandamus, or prohibition directed to Petty Sessions. But they do apply to appeals by poor persons to the Court of Appeal, and to the Divisional Court. The High Court is a branch of the Supreme Court.

The Supreme Court; the House of Lords.

The Poor Persons Rules do not apply to appeals by poor persons to the House of Lords, which has enacted special provisions for appeals by poor persons.

In most countries where civil legal aid is given to poor persons, they have to pass two tests before they can be admitted to the benefits of legal aid. These tests are: (1) a poverty test, (2) a *prima facie* case, or a *probabilis causa litigandi* test, as lawyers call it.

The two tests before civil legal aid can be granted.

In most civilized countries there is no rigid poverty test limit; the test being whether legal aid, in whole or in part, is necessary because of poverty in the particular case under consideration, to ensure that the poor person gets justice.

But the framers of the Poor Persons Rules and their amendments do not seem to have considered the practice in Scotland and in foreign countries.

The Poverty Test in England is made rigid.

The Poor Persons Rules of 1914 fixed the rigid poverty *limit* that the poor person must not be worth more than £50 (excluding wearing apparel, tools of trade, and the subject matter of the proceeding) or such larger sum not exceeding £100 as a *judge personally*, under *special* circumstances, might direct. This test was subsequently, on the recommendation of Mr. Justice P. O. Lawrence's committee (Command Paper 430) made still more severe and rigid, by the addition of an income test to the previously existing capital test. And by an amendment of the Rules a poor person to be entitled to any legal aid must also show that his income from all sources (and where the wife is the applicant in matrimonial causes that the joint income of herself and her husband) does not exceed £2 a week, or such larger sum not exceeding £4 a week, as a *judge personally*, in *special* circumstances, may direct. The poverty test limit therefore is now £50 capital and £2 a week income—and in special circumstances, but only where the judge personally makes an order, £100 capital and £4 a week income. It makes no difference that a man may be married or unmarried, may have many children dependent upon him, may have all sorts of absolutely necessary expenses to meet, if either he is worth more than £100 or earns more than £4 a week, it is impossible for any legal aid to be given to him in the High Court. And Lord Carson said, in the House of Lords, that the ordinary costs of a High Court action amounted to £200. It is believed that Lord Carson underestimated the costs of High Court litigation. The position therefore is that a poor person, whose capital amounts to £101, or whose income amounts to £4 5s., can get no legal aid in the High Court, and must be denied justice in such court. It is quite probable that such a poor person could pay something towards the costs and expenses of High Court litigation. It is obvious that such a poor person could not pay the whole expense. How absurd it is to deny such a poor person justice in the High Court, just because he can pay part, but not the whole, of the expenses. A poor person who is too poor to pay the whole expense, but is able to pay part, should, of course, get legal aid, and be compelled to pay as much as he can towards the expenses. That might make the poverty tests more difficult to administer, it might enable, in some few cases, persons who

are not poor to get legal aid, but if the test is administered by or through the law societies, as has been suggested by the last of Mr. Justice P. O. Lawrence's committees, very few persons not entitled to relief will be admitted to the benefit of legal aid, for the professional interests and instincts of solicitors must be to refuse legal aid in undeserving cases. There can be no doubt that the tendency of solicitors, acting officially as to the granting of certificates admitting poor persons to the benefits of the Poor Persons Rules, will be to act very carefully, and only to admit poor persons who strictly comply with the definitions set out in the Rules. The Rules in their present form absolutely exclude those poor persons who can pay part, but not the whole, expense of High Court litigation. In their present form the Rules also exclude the poorest of the poor, who cannot provide the out-of-pocket expenses, even though court fees may be remitted. And in this connection it may be useful to quote the Report of Mr. Justice P. O. Lawrence's committee (Command Paper 430) :—

> "It is only waste of time and labour to have cases reported upon and applications granted, if, after this has been done, the cases cannot be started or have to be dropped for want of cash for the necessary expenses.
>
> "Moreover we do not consider it right to encourage a poor person to find a small sum, and after that has been expended, to tell the poor person that the case cannot go on unless a further sum is found, which, in many cases, is quite beyond his or her means.
>
> "Unless a fund is constituted out of which the expenses of poor persons can be defrayed, the really poor and quite destitute persons have no chance of availing themselves of the Rules to obtain a divorce."

The Poor Persons Rules exclude from legal aid in the High Court two out of the three classes of poor persons that cannot get justice in such courts without legal aid. Legal aid under the Poor Persons Rules is only given to that class of poor person who is rich enough to pay his own out-of-pocket expenses, and who is poor enough to be able to prove that his capital does not exceed £100, or his income £4 a week. By this rigid poverty test limit, the Poor Persons Rules have created a specially privileged class of poor person. In no sense do these Rules make the administration of justice equal, even amongst the poor. They only assist a privileged middle-class poor person.

The probabilis causa litigandi test.

Before a poor person may be admitted to the benefit of the Poor Persons Rules, it must be shown that he has reasonable grounds for taking, or defending, or being a party to High Court proceedings. And under the existing Poor Persons Rules a reporting solicitor had to make a report on the merits of the poor person's case, and upon this report the court, as a matter of discretion only, could admit the poor person to the benefits of the Rules. It has been generally admitted that the work of a reporting solicitor was mere duplication of some of the work subsequently done by the conducting solicitor; and the suggested abolition of the reporting solicitor and delegation of his duties to bodies appointed by the law societies seems to be a good administrative reform. It is proposed to consider the report of Mr. Justice P. O. Lawrence's committee in a subsequent chapter.

The main defects of the Poor Persons Rules are :—

Summary of Defects in the Poor Persons Rules.

(1) That the Poor Persons' Department had no right to give legal advice, or to attempt conciliation. Its only business beyond acting as a clearing-house, was to issue forms for litigation, and keep records. The primary and first legal need of the poor is legal professional advice, given at the *earliest* time.

(2) That two classes of poor persons were excluded from the benefit of the Rules.

(3) That the rotas or panels for counsel and solicitors enabled anyone—good, bad and indifferent—to volunteer, and that such volunteers were not nominated or selected as in Scotland.

(4) That there was no fund for payment of out-of-pocket expenses other than the remitted fees.

(5) That when a poor person was successful in his litigation he was precluded from recovering ordinary costs like an ordinary litigant, and the State was precluded from recovering back, in such cases, the fees which had been remitted, as is the practice in Scotland.

(6) That when a poor person was unsuccessful in his litigation, he was expressly exempted from the payment of costs in the ordinary way to his opponent and that therefore he was not subject to the ordinary deterrent to frivolous litigation which the liability to pay costs imposes on an unsuccessful litigant.

(7) The other unworkable administrative provisions referred to in the Report of Mr. Justice P. O. Lawrence's last committee.

(8) The attempt to treat a solicitor acting gratuitously, as if he were a properly paid official, instead of a volunteer.

(9) The attempt by the Government and those in authority to make bricks without straw, at the expense of one section of the community.

(10) That they neither provide, nor purport to provide, equality in the administration of justice in the High Court. Nor is any legal aid given as a matter of right. What aid is provided by the Rules is only given as a matter of discretion.

(11) That all this elaborate machinery only provides legal aid for about two per cent. of the legal needs of the poor.

(12) That there is an absence of straightforwardness, minimizing and attempting to conceal difficulties, and an absence of any clear definition of the exact position of poor persons in the Poor Persons Rules ; the main object of which would seem to be to clog the wheels of justice, to hedge round and make as difficult as possible, any legal aid given under them : this result being probably produced because these Rules are a compromise of various conflicting interests.

CHAPTER V

THE PRESENT POSITION OF THE POOR IN ENGLAND AND WALES IN THE CRIMINAL COURTS

Assizes, Quarter Sessions, Petty Sessions—The Police Courts—Plight of undefended poor prisoners—Assigned or nominated counsel—A dock brief—Poor Prisoners Defence Act, 1903—Resolution of General Council of English Bar of 1903—Report of Select Committee on Poor Prisoners Defence Bill—International Law Association Report, 1903.

WITH the exception of the so-called dock brief, and in those rare cases in the higher courts where the judge asks counsel, not properly instructed by a solicitor, to take up a case for a poor prisoner, no legal aid in any shape or form is given to poor persons in the criminal courts of England and Wales, except under the Poor Prisoners Defence Act, 1903, and what aid is thus given, is not given as a matter of right, but only as a matter of discretion.

Assizes, Quarter Sessions and Petty Sessions.

The most serious crimes are tried at Assizes and Quarter Sessions, after a preliminary enquiry before the justices at Petty Sessions in the Police Courts: and if the justices are of opinion that the evidence given in the Police Court is not sufficient to put the accused person upon his trial for any indictable offence, the justices are to forthwith discharge the accused person, but if in their opinion the evidence is sufficient to put the accused person upon his trial, or if there is a probable presumption of guilt, the justices are to commit the accused person, who is eventually tried at Assizes or Quarter Sessions. What happens in the Police Courts in the preliminary enquiry as to serious crimes, is therefore of vital importance to an accused poor person. He has then the opportunity, without delay, in the Police Court to establish his innocence, and secure his release. Moreover, where there is a Grand Jury, there is another opportunity given to release an accused person before trial, if in the opinion of the jury the depositions of witnesses, taken and written down in the Police Court, do not disclose a sufficient case to go to trial. What happens in a Police Court thus gives two opportunities to an accused person to secure his release.

All the small criminal offences are triable before the justices in the Police Courts. It would therefore be accurate to say

that the bulk of the criminal work in England and Wales takes place in the Police Courts.

The Police Courts.

No legal aid of any sort is provided in the Police Courts for poor persons. It is probable that legal aid is needed more in these courts than in the superior courts. Even as to indictable crimes, legal aid in the Police Courts might so bring out the facts and points in favour of the prisoner, as to make the absence of legal aid in the superior courts not so fatal to the prisoner as it is at present. The Poor Prisoners Defence Act, 1903, does not apply to any proceedings in the Police Courts.

An ordinary person accused of crime, whether innocent or guilty, is not in a condition or frame of mind to plead, or conduct his own case. Even if he were, the atmosphere, conditions, and procedure, of a court of justice are unfamiliar to him. He is like a fish out of water. Probably he has been told by the police that if he pleads guilty, he will be leniently dealt with. He may feel, even if innocent, that his word alone can be of no avail against compromising facts which the police can prove. It is said that some innocent prisoners plead guilty for these reasons. The very phraseology of the summons, indictment, and official forms, is difficult, and almost impossible, for a poor uneducated person to understand.

If a poor person is remanded in custody he is allowed to see no one privately, except his solicitor—that is if owing to poverty he is unable to employ a solicitor he is prohibited from receiving advice or from giving instructions except in the presence of the police, who are always interested in the prosecution, and sometimes are the actual prosecutors. In short, it is quite impossible for an undefended poor prisoner in custody to have that complete trust and independence of judgment, which, according to the Report of Mr. Justice P. O. Lawrence's Committee (Command Paper 2358), is so essential for the maintenance of honesty and skill. An undefended poor prisoner on remand has no chance of securing ordinary justice or fair play in preparing his defence. An accused person is asked at the beginning of the hearing whether he is innocent or guilty. He has difficulty in knowing how to plead. He needs legal advice as to how he should plead. In the case of serious crimes he is often asked whether he would like the case to be tried summarily, or whether he would like the trial to take place in a higher court. How can he decide without proper legal advice? After each witness for the prosecution has

given his evidence, the prisoner is asked whether he has any question to ask. He may have been told below, that it is better not to fall out with the police—or at any rate he has that idea firmly implanted in him—and it is pathetic to see the helpless, puzzled state the prisoner is generally in. More often than not he asks no question, and seems dazed; when he does wish to ask a question, he generally makes a rambling statement which he is told is out of order at that stage. If he is able to get out any question, it almost always relates to some irrelevant matter. The prisoner needs legal professional aid in cross-examining the witnesses for the prosecution. It is pathetic to anyone, not steeped in the atmosphere of a Police Court, to watch an undefended prisoner making his hopeless struggle in court. Even if the prosecution is not professionally represented by a lawyer, it is generally represented by, or got up by, the police: and many authorities of high standing in this country consider a police prosecution to be far worse for a prisoner than a professional prosecution. The police could not take the same impartial, unprejudiced, view that a lawyer is trained to take. The police never like having dismissed a prosecution which is instituted by them. They cannot have the same sense of fairness that most lawyers would have, though, undoubtedly, many police prosecutions are fair to the prisoner, in spite of the temptation being the other way. Finally the prisoner is asked whether he wishes to make a statement, and he is warned that if he does so, "whatever you say will be taken down in writing, and may be given in evidence against you." Mr. Justice Grantham gave this as the reason why 90 per cent. of prisoners did not disclose any defence in the Police Court. A poor person is in need of proper legal advice, after such a solemn warning, before he can come to any decision.

Plight of undefended poor prisoner.

The trouble with undefended prisoners is that, through not understanding the procedure, the effect of the evidence given against them, or what facts are material to their own defence, they are unable to really bring out their own case or defence. And probably most of them are wise in not attempting what is impossible.

"The police are supposed to facilitate the defence, and excellent missionaries frequently appear on the same side. All this is good as a recognition of duty, but it is also insufficient as a fulfilment of it. The magistrate is not, and cannot be, counsel for either side; the police are entirely interested for the prosecution, and missionaries [and probation officers]

are not sufficiently free from obligation to the police to be independent. . . . Sir James FitzJames Stephen frequently remarked that poor and ignorant prisoners, unaccustomed to collect their ideas or to understand the bearing of evidence, are placed at a great disadvantage by never having stated their own case. . . . There is a scene which most lawyers know by heart, but which I can never hear without pain. It is the scene when the prisoner, confused by the unfamiliar surroundings and by the legal rules which he does not understand, tries to question the adverse witness, and muddles up the examination with what ought to be his speech for the defence and, not knowing how to examine, is at last reduced to utter perplexity, and thinks it respectful to be silent."[1]

Mr. R. H. Smith suggests in *Justice and the Poor* that the duty of a lawyer representing a prisoner, and which cannot be performed by the prisoner himself is, (1) to advise the prisoner as to his legal rights, (2) to give him honest representation at his trial, (3) to submit facts to the court by which a just sentence may be passed.[2] The court has an inherent power to appoint counsel from amongst those in court, to represent a poor prisoner on his trial, and this power is often exercised in murder cases. In such cases counsel alone is nominated. Twenty years ago or more the Select Committee on the Poor Prisoners Defence Bills reported that it was a matter of great importance that a solicitor as well as counsel should be assigned to a prisoner, " because the *basis* of an effective defence generally involves preliminary communication with the accused, obtaining of evidence for the defence, and inquiry into the case for the prosecution." And that committee recommended that both *solicitors* and counsel should be instructed, and " *should be paid for their services.*" In spite of that report and that recommendation, counsel alone, not properly instructed by a solicitor, are constantly being employed in defending poor prisoners in the criminal courts in England. It is essentially charity—not justice.

Assigned Counsel.

By a custom of the Bar an undefended poor prisoner, having £1 3s. 6d. in his pocket, may on the day of his trial, but not at an earlier date, in open court—but in no other place—claim the right to be represented by any unnamed counsel then present in court. This right must be strictly exercised, only according to Bar etiquette. Such a poor prisoner has no right to ask for any specific counsel by name.

A Dock Brief.

[1] T. R. Bridgwater on the *Poor Prisoners Defence Act*, 1903.
[2] R. H. Smith, *Justice and the Poor*, p. 121.

All he is allowed to do is to *speechlessly* point with his finger at some particular barrister. In one court it is said that all the barristers have to turn their backs to the prisoner whilst he is making his choice. At one of the London Sessions, the prisoner in the dock at the back of the court, who indicates that he can pay for a dock brief, is solemnly marched down into the body of the court, past the huge array of counsel, and is planted under the judge's bench, facing counsel, and is then called on to choose—and moreover to choose quickly. The man is bewildered with the mass of faces, until some junior smiles, when at once the prisoner's finger shoots out in the direction of the pleasant counsel. It is generally possible for counsel holding a dock brief to have a few minutes conversation with the prisoner in the cells, before the trial takes place, and he may have time to get from the prisoner some facts, mostly irrelevant. But as counsel is not instructed by a solicitor and has had, or ought to have had, no experience in interviewing lay clients, and working up their defences, and has no time, even if he were capable of doing it, to collect evidence for the defence, or material for cross-examination of the witnesses for the prosecution, such dock brief defences are really a caricature, and almost invariably end in a conviction. Some very useful observations by Sir Harry Poland as to the uselessness of counsel not properly instructed by a solicitor, will be found in the minutes of evidence taken before the Select Committee on the Poor Prisoners Defence Bill.

A counsel appointed by the judge without being properly instructed by a solicitor, who has had time to get up the facts and evidence, and a dock brief, are both mere palliatives, and do not in any way give the poor equality in the administration of justice in the criminal courts. In the C.O.P.E.C. Report on Crime they are described as palliatives and un-Christian, hardly touching the fringe of the problem. That Report was signed by one of the Metropolitan magistrates, the Secretary of the Magistrates' Association, and by social workers and others having knowledge and experience of the real facts.

The Poor Prisoners Defence Act, 1903.

The Poor Prisoners Defence Act, 1903, does give legal aid to poor prisoners in certain cases, of a much better character than that given, or attempted, by a dock brief or counsel appointed by the court. The Act gives no legal aid as of right, but only as a matter of discretion. The discretion may only be exercised, having regard to the defence disclosed

by the prisoner. If Mr. Justice Grantham was accurate in his estimate that 90 per cent. of prisoners did not disclose any defence in the Police Court, the Poor Prisoners Defence Act could only apply to ten per cent. of poor prisoners, undefended at Assizes or Quarter Sessions. The Poor Prisoners Defence Act does not apply to the Police Courts. It only becomes applicable after the prisoner has been committed for trial in the Police Court.

This discretionary power to grant legal aid may be exercised by the committing justices upon (not before) committal of the prisoner, or by the judge at Assizes or chairman at Quarter Sessions, *after* reading the depositions, which may, and apparently generally do, contain no deposition in favour of the prisoner. In exercising this discretion regard must be paid to the nature of the defence of the poor prisoner *as disclosed* in the evidence given or statement made by him before the committing justices, and it must appear to be desirable in the interests of justice that he should have legal aid and that his means are insufficient to be able to get it. When all these requisites have been complied with, and not until then, legal aid can be given to an undefended poor prisoner at Assizes or Quarter Sessions.

The discretion given by the Poor Prisoners Defence Act, affecting as it does, no prisoner in the Police Court, and only ten per cent. of prisoners in the higher courts, can therefore only be exercised when all the following conditions exist :— (1) Regard must be had to the *nature* of the defence set up by the poor prisoner ; (2) that defence must be disclosed in the Police Court ; (3) that it is desirable in the interests of justice that he should have legal aid ; (4) the prisoner, however poor, must not have been committed on depositions taken only in the Coroner's Court ; and (5) that his means are insufficient. When any one of these five conditions is absent, the very limited and attenuated discretion cannot be acted on.

There is no machinery for testing whether or not an undefended poor prisoner is a poor person. And in practice generally there is no poverty test. And this agrees with the American practice of the " Public Defender," for it is thought in America that any man who could possibly afford it would in a criminal charge prefer to have his own lawyer. It is assumed in America that any person applying for legal criminal aid must be a poor person. And, as far as can be gathered, that is also English practice.

The great defects of the Poor Prisoners Defence Act, 1903, seem to be:—

(1) The aid is given as a matter of discretion and not of right.
(2) The Act does not apply to the Police Courts.
(3) No aid can be given, unless the prisoner discloses his defence in the Police Court.
(4) Even where a defence is disclosed, no aid can be given unless (*a*) there is something special in the nature of the defence, (*b*) that it is desirable in the interests of justice that the prisoner should be defended.
(5) Many, possibly most, poor prisoners have no knowledge of the Act, or that legal aid can be given to them.
(6) At Assizes and Quarter Sessions the legal aid comes too late to be of much service to the prisoner.
(7) The scale of fees or remuneration of the lawyers who give the legal aid is so small, that the best men in both branches of the profession are not attracted to take up such work.
(8) There is no provision for the defence of a poor prisoner committed on a coroner's warrant only.

The General Council of the English Bar on the 27th April, 1903, passed the following resolution:—

Resolution of the General Council of the English Bar.

"That it is desirable in the interests of justice that *every* prisoner committed for trial should have, if he so desires, professional assistance [explained to mean, in the proceedings before the special committee on the Poor Prisoners Defence Bill, "counsel and solicitor"] at his trial, and reasonable means afforded him of bringing his witnesses to court, although he may not be able to pay for either of these advantages."

The Report of the Select Committee on the Poor Prisoners Defence Bill, and the Minutes of Evidence.

It is very useful to anyone wishing to understand how such a dismal failure as the Poor Prisoners Defence Act ever became law, to read and study the Report of the Select Committee on the Poor Prisoners Defence Bill, together with the Minutes of evidence, especially the evidence of Sir Harry Poland, K.C., and the Earl of Desart, K.C.B., the director of Public Prosecutions. Mr. Justice Channell, who was away on circuit, wrote a letter to the Chairman of the Committee in which he expressed the view that the Bill or the Rules to be made under it should in some way provide that neither solicitors nor counsel should be entrusted with the work *merely because* they have been admitted or called and

were willing to do it, and that there should be some *selection*, or mode of securing *competency* either by their being nominated by the leaders of their branch of the profession or otherwise. But now, in practice, solicitors and counsel, acting under the Poor Prisoners Defence Act, are mere unselected volunteers, usually nominated by nobody. In practice, young inexperienced counsel are habitually used for these poor prisoners' defences, there being, of course, occasionally an exception. And the Poor Prisoners Defence Act is very useful for educating young inexperienced members of the Bar, at the expense of the liberty and reputation of poor prisoners, because that education is acquired without supervision.

What strikes one at once about the proceedings of this Select Committee is that no one seemed to realize that the end in view ought to have been to make the administration of justice equal in our criminal courts ; that the poor prisoner, as much as any other citizen, had a constitutional right to that equality in the administration of justice. Magna Carta seems to have escaped the memory of everyone concerned. The object and aim seem to have been, out of pity, and in hard cases, provided it did not inconvenience the court or judges, to give some form of charity, not as of right, but as a matter of discretion.

The Scotch system of giving legal aid in criminal matters was put before the Select Committee. The following excellent principles (which do not, of course, go far enough) were suggested to the committee :—

(1) That in criminal matters, where the prosecution is conducted by experienced solicitors and counsel, it is contrary to the ordinary requirements of justice, that no legal advice should be given to the prisoner.

(2) That a prisoner without means ought to be in no worse position to establish his innocence than a prisoner who is able to pay for legal assistance ; and that the assistance of counsel and solicitor is of great importance for this purpose.

(3) That although it is the business of the judge to see that the prisoner's defence is properly developed, and with that object in view to cross-examine the witnesses for the prosecution or to re-examine the witnesses for the defence, including the prisoner if he gives evidence and is cross-examined, yet the judge is not in a position to do this as effectively as counsel *properly*

instructed, because he has no opportunity of communicating with the prisoner and ascertaining the details of his defence; nor has he usually sufficient materials for the cross-examining of the witnesses for the prosecution. Furthermore that, especially in the case of Chairmen of quarter sessions who are not lawyers, the difficulty of their task is greatly increased in the absence of legal assistance for the defence.

(4) That in Scotland the widest application of those principles had been in successful operation for many years.

Most of the witnesses who gave evidence agreed as to the importance of those considerations. But the committee, obviously on the face of their report, were much influenced by the following considerations, which it is submitted ought to have had no weight at all, and ought not to have been even considered as being relevant to such a question as justice or the denial of justice.

(1) That the number of cases to be tried, especially in London, is so great that it would be impossible to dispose of them in the time available, if a much larger number of poor prisoners were defended by counsel, without a large increase in the present judicial machinery. [*Note.*—Should a matter such as this affect justice, or the constitutional rights of the poor, even if the anticipation were accurate? As a matter of fact it has been found in America that the Public Defender expedites the hearing or trial of otherwise undefended prisoners. And in Scotland where the Edinburgh Legal Dispensary provides a lawyer as "defensor" in the Police Court, for poor prisoners, exactly the same result is attained, and the efforts of this "defensor" were found to be so useful to the court that the Edinburgh Town Council voluntarily makes him an annual payment of £30 towards his expenses.]

(2) That nearly 40 per cent. of prisoners tried plead guilty under the present system [*Note.*—The reasons for this have been explained] and that it would not be worth while to tempt them with the offer of solicitor and counsel to try for the chance of an acquittal. The last consideration was thought by the committee to have considerable force, and they recommend that the

operation of the Bill should be *limited* to cases in which, having regard to the nature of the defence raised by a prisoner, it appeared to be desirable in the interests of justice that he should have legal aid. [*Note.*—Because 40 per cent. of prisoners plead guilty, many of whom, if not most of whom, are not defended, is that any reason at all why one single case of a poor person should go undefended? If all prisoners were poor, could there be any sense at all in refusing legal aid, or granting anæmic attenuated legal aid to 60 per cent of them, because 40 per cent. plead guilty? The committee was looking at the matter from the wrong point of view. A guilty prisoner requires, and is entitled to justice, as much as an innocent prisoner. Even a guilty prisoner is constitutionally entitled to the equal administration of justice, and though guilty, he cannot get that constitutional right, unless he is properly defended. In America all the Public Defenders act for, and represent in court, guilty as well as innocent prisoners. Indeed it may well be that a guilty prisoner is in greater need of legal help to secure justice—*i.e.*, a proper decision—than an innocent prisoner.]

This Report, like the Reports as to civil litigation, is a most valuable and important document, because it shows clearly the reasons which caused the legislature to enact such an attenuated and ineffective Act. If motives like that, and reasons like that, influence and guide, as they have done, a committee in reporting on this subject, it explains quite clearly why England has such an extraordinary system of legal aid. The object was not to make justice equal—it was only charity. Indeed, no one connected with this committee seems to have had any idea, or suspicion of an idea, that the poor constitutionally were in the same position as themselves, and were entitled to the equal administration of justice, whether or not they could pay for it. And the result of failing to look at the matter from the proper point of view was the production of a caricature of what justice—universal justice—really means.

This Report was quite sound as to two vitally important matters connected with legal aid to the poor:—

(1) That it was of great importance that solicitors as well as counsel should be assigned to the prisoner, because

the basis of an effective defence generally involves preliminary communication with the accused, obtaining of evidence for the defence, and inquiry into the case for the prosecution.

(2) That the assistance of any but competent and experienced solicitors and counsel was *worse than useless* and that they should be *remunerated* at the public expense; recommending that both solicitors and counsel should be instructed in such cases, and should be paid for their services.

The International Law Association Report.

In a very valuable report of the International Law Association dated January, 1903, based on a paper written by J. P. Coldstream at the International Law Association Conference in Glasgow in 1901, it was recommended that a bureau be established for advice and court aid in civil cases, and that in criminal matters there should be sent to this bureau a note of causes to be tried in all criminal courts, and that the bureau should see to it that in *all cases* of poor persons where the prosecution is professionally represented, the defence should also be so represented, and the fees of defending counsel and solicitors should be paid by the Government.

CHAPTER VI

THE REPORT OF THE POOR PERSONS RULES COMMITTEE, PRESIDED OVER BY MR. JUSTICE P. O. LAWRENCE (COMMAND PAPER 2358) AND THE LAW SOCIETY'S OPINION THEREON.

Report only deals with administration and nothing else—Administrative changes generally good—Defects of the Report—Annual Meeting of Law Society, where Report was discussed—Report of Law Society after meeting—Summary of the present position of the poor.

THE Report of Mr. Justice P. O. Lawrence's Committee (Command Paper 2358), especially if it is compared with the Report of Mr. Justice P. O. Lawrence's Committee (Command Paper 430), and the Report of the Special Committee of the Law Society to consider the matter, is of so much importance, not only as a guide in the future as to what not to do, but also as to the great almost insurmountable difficulties experienced in England in attempting to solve the legal difficulties of the poor on charitable and voluntary lines, that it is well worth while, even when considering the provision of legal aid in the County Court, or in any Civil Court, to see into what a hopeless position one will be led by unpaid, haphazard charity, throwing the whole burden of legal aid to the poor on one section of the community.

The Poor Persons Rules, thereby differing from the Poor Prisoners Defence Act, did attempt to give the poor *organized charity*. In fact, the charity was too much organized. Every precaution seems to have been taken to prevent any abuses by the profession, to preserve their privileges, except as to any right to remuneration, and to restrict as much as possible the legal aid given, both as to its character, and as to the classes of persons who were to receive it. In no sense do these rules give anything else to the poor other than legal charity, restricted and hedged round by rules, which do not apply to ordinary litigants. Any legal aid given is merely a matter of discretion.

The terms of reference to the Poor Persons Rules Committee were wide enough to cover the consideration of the amendment of the Poor Persons Rules, or the institution of a different system, so as to enable poor persons to take or defend proceedings in the High Court. The most remarkable

thing about this report is that it considers, and reports on, *nothing except administration*. It does not in any way enlarge, or alter, the legal aid previously given to the poor in the High Court; on the contrary, the recommendation to restrict or prevent poor persons from paying more than £10 for out-of-pockets, no matter how much larger those out-of-pockets may necessarily and properly be, could only reduce still further the number of people getting redress under the Rules. It is still impossible under the Poor Persons Rules for the poorest of the poor to get any relief (because they cannot find the out-of-pocket expenses), and it is still impossible to give any legal aid to those *poor* persons who could find part, but not the whole, of the costs and expenses (because either they may be worth more than £100, or may have an income of more than £4 a week); the result being that the Poor Persons Rules, with the amendments suggested by the Report of the Poor Persons Rules Committee, only make it possible to give civil legal aid in the High Court to one special privileged class of poor person. It is difficult to see (Paragraph 12) how a moral obligation exists on the part of solicitors to bear the whole burden of legal aid to the poor, because they enjoy a monopoly of the practice of the law. In the first place, do solicitors enjoy a monopoly of the practice of the law? They have no right of audience in any of the higher courts, whether civil or criminal. Their original bankruptcy business has gone to official receivers. House and estate agents do much of the business which used to be exclusively done by solicitors. Even if solicitors had a monopoly of the practice of law, is there any profession or business which bears the whole burden of the general poor (not being members of the particular profession or business) for the need supplied by that profession or business, in this or any country? What would happen if it were suggested that persons licensed to sell intoxicating drink, were gratuitously to supply the whole need of the general poor for drink, even if that need were restricted and controlled or organized by an elaborate set of rules? There is more than one reference in the Report to the Bar etiquette as to legal aid to the poor being given by gratuitous service. But the reasons for this etiquette are not brought out. If any payment were made to counsel for taking poor persons' cases, obviously Poor Persons Procedure could not be used by the Bar for the education of young, inexperienced barristers, without supervision. Moreover, it would be contrary to the Bar boast that any barrister is willing to take up a case gratuitously for the poor. That is theory. What happens in practice

Report only deals with administration and nothing else.

can be seen if one watches what barristers generally in fact take poor persons' cases. Occasionally an eminent K.C. does take a poor person's case. When that happens the judge usually calls attention to, and praises, such an anomaly. A relative of an eminent King's Counsel once asked him whether he did not think that England ought to make the same provision for the legal needs of the poor as had been made in other countries. His reply was—" Quite unnecessary. Don't you know that it is the proud boast of the English Bar that no member of it ever refuses to take up a case gratuitously for a poor person ? " He was asked how many such cases he himself had taken up either as a junior or silk : and he had to admit that in the whole course of his career he had not taken up a single poor person's case.

The witnesses who gave evidence before the committee seem to have consisted chiefly of official witnesses, solicitors from the three great provincial law societies, and solicitors from the big agency firms. It is not known whether any witness was called of the type of the country police and County Court advocate (outside the Law Society representatives), who would in practice, in normal times, when no special effort was being made by the big firms, be the class of solicitor who would do the bulk of the conducting work for poor persons.

The Administrative recommendations are generally good.

On the whole, the administrative changes recommended are wise, and would seem to indicate a step in the right direction. The 1st, 2nd, 3rd, and 5th reasons (paragraph 25) given by the committee for its recommendations are sound. In addition, by transferring the organization and control to the law societies, probably it will gradually be thought an honourable thing to give legal aid to the poor, and a lawyer will not lose caste by doing so. It may even become fashionable. It certainly should develop some of that *esprit de corps* which exists in the medical profession. Under this report the reporting, and now certificating, solicitor will certainly become more fashionable. But the conducting solicitor, on whom the whole work and responsibility rests, has had nothing done for him, and his position seems to have been made worse. With the utmost good will and organization, the law societies cannot carry out a scheme which is inherently unfair. The committee seem to have missed the root of the trouble—the conducting solicitor's out-of-pocket expenses.

The Report does not refer to the reason why the matrimonial cases so largely outnumber the other cases. The reason is that a speculative solicitor cannot as a rule get

costs from the other side in matrimonial proceedings between poor persons. In cases other than matrimonial, the speculative solicitor prefers to make no use at all of the Poor Persons Rules, but carries through the poor person's litigation in the ordinary way, without hedging or restrictions, using the ordinary procedure ; and if the poor person is successful, the speculative solicitor gets costs from the other party to the litigation, and is remunerated in the ordinary way. Another reason for using the Poor Persons Department as little as possible is stated to be, that great and unusual delay takes place before cases of admitted poor persons whose cases have been favourably reported on, come on for hearing before the court. The greatest defect in the Poor Persons Department was its inability to give legal advice—or to attempt conciliation.

The chief defects of the Report (Command Paper 2358) are :—

The Defects of this Report.

(*a*) That no provision is made for the payment of the whole of the conducting solicitors' out-of-pocket expenses. Three reasons are given in the Report (paragraph 6) for the reluctance of the majority of solicitors to act as conducting solicitors. These reasons do affect the matter. But with respect, it is submitted that the fundamental difficulty is that the conducting solicitor does not receive the whole of his out-of-pocket expenses. Each of the three reasons given in this Report would affect solicitors doing matrimonial cases in their ordinary practice, where they received proper fees. But in the Report (Command Paper 430, paragraph 20), it is stated that, during 1918 in London there were 790 solicitors doing matrimonial cases in the usual way for their own clients, and 68 solicitors during 1918 who in London undertook poor persons' matrimonial cases. There is no difficulty in getting matrimonial cases taken up, if ordinary fees are paid. There is difficulty when a solicitor is not only asked to act gratuitously, but does not receive the whole of his out-of-pockets.

The Report (Command Paper 430) punished the whole body of conducting solicitors, because a few of them abused the rules. By placing the administration and control under the law societies, any abuse of the rules is rendered practically impossible.

(*b*) That it abolishes the Poor Persons Department, which was admittedly of little use, and establishes no office

in its place—other than the reservation of a room at the courts or in some public building for the occasional meetings of the committee of solicitors who will act as reporting solicitors, and whose secretary will be the local librarian, or clerk to the law society, or an honorary secretary.

This must mean that it is not intended that the law societies should regularly keep open an office to which the poor can apply, and come for advice. Such an extraordinary habitation, with such extraordinary officials, from a legal point of view, would surely be worse than the Poor Persons Department, in the interest of the poor alone.

(*c*) That it assumes the result of giving the law societies control will enable pressure to be used to whip up conducting solicitors.

In the interest of the poor—which is the first consideration—nothing can be worse than forced service, or unwilling service. To attempt to make men do gratuitously what they consider unfair or unreasonable cannot possibly be of any real service to the poor. Shakespeare referred to the uselessness of unwilling service in "King Lear":—"'t is like the breath of an unfee'd lawyer, you gave me nothing for 't."

(*d*) It makes the position—always an easy one—of the reporting solicitor more honourable. It does absolutely nothing for the conducting solicitor, who is really the key to the problem, and who really has to do almost all the work, and take all the responsibility. On the contrary, by limiting the right of poor people to pay more than £10 for out-of-pockets, the conducting solicitor becomes, in the absence of a fund, either ridiculous, or a martyr.

(*e*) That it recommends the payment of an annual sum of not less than £3,000 to the Law Society for administration, and recommends no payment for a conducting solicitor's out-of-pocket expenses, which will probably sooner or later mean that there will be nothing to administer.

It seems to have been entirely forgotten that all such things as law societies, reporting solicitors, the authority to give certificates of admission to the benefits of the Rules, are all subsidiary, and steps to the main requirement, which is a conducting solicitor able to pay all necessary out-of-pockets, except court fees.

(*f*) That it has not apparently considered, or at any rate has made no recommendation, that a poor person when successful, should receive ordinary costs like an ordinary litigant, as is the practice in Scotland, and that in such cases the State should benefit by being repaid the fees which had been remitted. Such a provision would not only solve the problem of the Poor Persons Rules, but it would also solve the problem connected with bogus legal aid societies and speculative solicitors. For were it adopted, bogus legal aid societies would disappear, and speculative solicitors would no longer object to take proceedings under the Rules, but would come in under the general organization of the law societies, and would be subject to their discipline and control.

(*g*) That in the interests of the poor, as it is essential that one and the same body should administer and control the whole of the legal aid (whether advice or civil and criminal court aid) given to the poor, though the Report does suggest the only body that could do so on a voluntary basis, it does not suggest any organization, or the means of forming any organization, which could eventually act as the centre for that legal aid. Most countries doing such work, other than Scotland (the great defect of whose system is the absence of the provision of legal advice), provide as the main requisite, a bureau, solicitor's office, or as the Americans call it, a law office. And it will be impossible to provide legal aid in the other branches of law, where such aid is required, without the formation under the control and administration of the law societies of such bureaux or offices.

(*h*) That it establishes a privilege with regard to sex, putting a married woman in a privileged position compared with a married man.

The Report under consideration makes a great advance in several directions:—(*a*) it recognizes the importance, in the interest of the poor, of decentralization; (*b*) it recognizes that you cannot treat unpaid volunteers as if they were paid civil servants; (*c*) it apparently recognizes that, where poor persons are concerned, the solicitor is by far the most useful and important instrument; (*d*) it recognizes that, if the poor are to have unpaid charity to do their legal work, the only possible way of getting that charity *organized* is to put the control and administration under the law societies.

The Report might have gone further, and have recognized that, if the poor are to have their legal needs supplied by unpaid charity, the only possible way of keeping such legal aid *clean and efficient* is to put it under the control and organization of the law societies. There is no doubt that the law societies will do that. The trouble is, if the conducting solicitor is not paid the whole of his out-of-pocket expenses, whether the law societies will have anything to organize or to keep efficient.

The recommendation that the committees of solicitors should give the certificates of admission to the benefit of the Rules and also act as the reporting solicitors, is a good administrative reform, making for economy and efficiency. It is probable that the older solicitors will be appointed to these committees. Their duties will be of a judicial character, and such positions will probably be desired by many solicitors, as being an honourable position. If they were made magistrates, it would add to their dignity, and would greatly strengthen the local benches by making more trained lawyers justices of the peace.

The annual meeting of the Law Society where the Report was debated, but not considered.

This report was discussed at the annual meeting of the Law Society held on the 10th July, 1925. Half the speakers somewhat severely criticized the report of the Poor Persons Rules Committee. Below is set out a report of this meeting, which, being condensed, is not always quite accurate. The Report of the Poor Persons Rule Committee was not considered. It was only debated as to particular points. Nor was the report of the Special Committee of the Law Society either read or debated at this meeting.

POOR PERSONS AND THE LAW SOCIETY.—[From the *Law Times*.]

"The chief topic of discussion at the annual meeting of the Law Society, a full report of which will be found in another column, related to the new Poor Persons' procedure formulated by the last committee presided over by Mr. Justice Lawrence. The report of that committee was certainly a step in the right direction, for if any scheme of assistance to poor persons is to be a success it must be worked by the Profession and not by a Government department. Much of the difficulty of the past has arisen from the inadequacy of the allowance for out-of-pocket expenses and from the system by which disbursements were checked. Solicitors have always been ready and willing to give their services, but it was never intended that they should be out of pocket at any time by providing funds for the furtherance of the causes of

poor persons. As Sir John Gregory pointed out, the difficulty with regard to the recoupment of out-of-pocket expenses arose from the fact that the solicitor's bill had to be submitted to the prescribed officer, but under the new scheme the account will not now be submitted to any official but to the professional committee, who will be able to exercise a wide discretion and allot a proper sum for out-of-pocket expenses. We believe the present scheme will prove a success, for the work will be on a wider basis and more distributed throughout the country."

Report of the Law Society Meeting.

"Mr. E. C. LEA said that the report referred to the report of the committee appointed by the Lord Chancellor in 1923 to inquire into the difficulties which had arisen in the working of the Poor Persons Rules. It went on: "The report is unanimous, and recommends a scheme enabling poor persons' matrimonial cases to be commenced and prosecuted in twenty-one District High Court Registries, and to be tried at eight Assize towns, in addition to the ten Assize towns at which poor persons' divorce cases are now tried under Order XXXVI.A, r. 8. The scheme provides for the abolition of the Poor Persons' Department, and for all work in connection with poor persons' cases to be taken over by solicitors as a whole, free from any official control. It provides also for the work being done under the supervision of the Law Society and the provincial law societies by committees to be appointed by those societies and approved by the Lord Chancellor; such committees to have power (*a*) to certify who shall be admitted as poor persons, (*b*) to nominate conducting solicitors, and (*c*) to exercise a general supervision over the conduct of the proceedings. The scheme recommended also an annual Government grant in aid of administrative expenses, to be paid to the Law Society and to be appropriated by that society in furtherance of the scheme as a whole." He said he did not know what was contained in the scheme, or whether the council proposed to adopt it later on, but he wished to point out that, in his opinion, founded on experience, it would be a very great mistake to abolish the Poor Persons' Department. It did the spade work in a far better way, he was certain, than the Profession would be able to do it under the supervision or guidance of the Society. He did not know whether the council proposed to investigate or delegate to a committee every poor person's case that came up. He felt sure that no committee of the council or of solicitors would take the infinite trouble which that department now took. The department investigated the matter and put the case in

form ; then it was sent to a reporting solicitor, who investigated it still further, and finally it went to the solicitor who undertook the work. He, personally, had had a good many such cases, and he believed that if one-fourth of the solicitors practising in London were each to take one case, there would be no congestion or trouble in the matter. He was afraid that there were a great many members of the Profession who had not considered it their duty to undertake these cases ; but if they would do as he suggested all difficulty would be met. He should like to know what would be the attitude of the council if the scheme were adopted. He urged that, before anything was settled, they would give the matter most earnest attention with the object of considering whether it was desirable, in the interest of poor persons, that the present method should continue. If the council adopted the scheme, he doubted greatly whether the amount to be given to the society would not very greatly exceed the cost of the department as at present constituted.

Mr. GURNEY-CHAMPION asked for information as to the special committee which had been appointed by the council to consider the subject. He would like the names of those composing it and also the nature of their report. The scope of the enquiry of the new departmental committee referred to in the report covered practically the whole ground. It had been calculated that the Poor Persons Rules did not deal with anything like a sufficient percentage of the cases that ought to be undertaken, and it was probable that the council would have to deal with a still larger problem in the near future. The report of the Poor Persons Rules Committee provided that it was still necessary that the poor person should find £5 or the out-of-pockets before he could get any relief. That was to say that the poorest of the poor, those in greatest need, could not get any help. Further, it was quite impossible for the person whose income exceeded £4 a week, or who was worth more than £100, to get relief. Therefore, the person who could find something towards the expense but could not pay the whole, could get no assistance under the rules. The report of the Poor Persons Rules Committee made it possible only to help one out of the three classes of poor persons who required its help in the High Court. Probably the terms of reference to the new Departmental Committee would enable the case of the poor, and of those who could afford to pay something, to be considered by the new committee. Looking at the matter from the practical point of view, he did not think it possible to solve the problem of legal aid in the way suggested unless each law society established within its

jurisdictional locality a proper solicitor's office, at which legal advice could be obtained. If the new scheme suggested by the Poor Persons Rules Committee broke down, or failed to get sufficient Government financial support, no one could blame the Law Society. The old Chancery rule as to the costs of successful litigants ought to be restored. If a successful poor person were able to get costs in the ordinary way, as an ordinary litigant would, there would be no difficulty at all in the Law Society administering the whole of the civil aid required by the poor, either in giving advice, or in the County Court, or the High Court. He did not think it was other than the wish of the Profession to help the poor, and everyone should, so far as possible, help the council in the restricted field which apparently they intended to enter. The report of Mr. Justice Lawrence's committee did apparently indicate a step in the right direction. He did not agree with the previous speaker, and thought that the society should support the council in their efforts to carry the scheme into operation. If the conditions under which the scheme was to be worked were such that the solicitor would not receive even his out-of-pocket expenses, it would be so unworkable that it would break down.

Mr. BARRY O'BRIEN said that he did not know exactly what scheme the council had in mind, and until the society received some information on that point he thought that those who in the past had undertaken the poor persons' cases and were prepared to do so again would hesitate about doing so. Speaking as one who had undertaken these cases, he believed that there were very few members of the Profession who would not recognize the duty to assist in the matter. But there were two sides to the question. There was the poor persons' side and there was also the solicitors' side to be considered. He had known of solicitors ceasing to take these cases because of the absurd system, as he had heard it called, with regard to out-of-pocket expenses. The fact of the solicitor having to account for every penny was ridiculous and degrading; and until that was altered he, personally, would not take any further cases. He hoped the committee of the council would give fair consideration to the position of solicitors undertaking the work. They ought to be able to look forward to doing it without being out of pocket. A speaker had regretted that the Poor Persons Procedure was passing to the council of the society and away from a Government department. Without casting any reflection upon that department, or upon those who discharged the work, it was generally to be admitted that work administered by Govern-

ment departments suffered under the disadvantages of red tape and dilatory methods. If the work were administered by the society it was to be hoped there would be efficiency, and, above all, celerity.

The PRESIDENT promised that the suggestions that had been made would be carefully considered by the council. Poor Persons Procedure was a very difficult matter. The whole of the solicitors of the country would have to be brought into line ; all the local societies would have to be consulted. The committee were holding frequent meetings.

Sir J. R. B. GREGORY (chairman of the special committee), referring to the remarks of Mr. Lea, said that it was true that it was proposed to do away with the Poor Persons' Department ; but he thought Mr. Lea had unconsciously exaggerated the work done by that department, which had only the duty of seeing that the cases were dealt with, and of selecting the people to deal with them. The council proposed to eliminate the great objection which the last speaker had referred to, namely, that the solicitor had to submit to having the small details of expenditure criticized by a person who was more or less ignorant of the subject. It was considered by the society's central committee, and by the committees in the provinces, all of them composed of solicitors, advisable to undertake the conduct of the work and see it through, not only for the benefit of the poor persons, but for the honour of the Profession. The difficulty with regard to the recoupment of out-of-pocket expenses arose from the fact of the solicitor's bill having to be delivered to the prescribed officer. His account would not now be submitted to any official but to the committee, and the committee would be able to exercise a wide discretion and to allot to the solicitor such sum as they might think proper for his out-of-pocket expenses, *provided, of course, there were sufficient funds.* In divorce cases there would be a deposit of £5—in special cases possibly £10—*and solicitors would be under no obligation to provide a single penny of expense.* In most cases the deposit would be sufficient, but if it were not, the solicitor might go to the committee and ask the poor person client to make some addition to the amount already deposited. He realized that in taking over the work the council were accepting a very serious burden ; but the fact of Mr. Justice Lawrence's committee having recommended that the society should undertake the work formed welcome evidence, in his opinion, of the confidence of the committee in the honour of the Profession. He believed the council would do the work better than it was done at present. They would do it on a wider

basis, and with a knowledge that was not within the scope of the prescribed officer—the registrar of the Chancery Division, or a master of the High Court ; and he thought it would be found, having regard to the controlling point in the report, that the work of the divorce cases should be spread over the whole of the country, instead of being centred entirely in London. That would enable a fair division of the work to be made between London and country practitioners, and the work would go through with very much less labour being thrown on any particular practitioner. The committee were engaged in making to the council their report, which was already in draft, upon the report of Mr. Justice Lawrence's committee. The society's committee had tried to deal with the many criticisms which had been made and with many of the difficulties which occurred, or which might be raised, in the working of the scheme. It was important to anticipate all the small details that might arise in the working ; but he did not think they would be insuperable. He was quite sure that the meeting would believe that the council would do their best to carry out the work, and if they succeeded it would be a complete answer to anybody who might—quite improperly—suggest that the members of the Profession were regardless of anything but their own interests.

The motion for the adoption of the annual report of the Law Society was carried."

The Report of the Special Committee of the Law Society.

On the 1st of August, 1925, the Council of the Law Society published in the *Law Times* a copy of the report made by the Special Committee appointed by the council to consider and report on the Report of the Poor Persons Rules Committee. Below is set out a copy of their report as published in the *Law Times* on the 1st August, 1925 :—

THE LAW SOCIETY.

Poor Persons Procedure.

REPORT OF THE POOR PERSONS COMMITTEE.

Adopted by the Council on Friday, the 24th July, 1925.

The main recommendations of the report made by Mr. Justice Lawrence's Committee are four in number and are as follows :

1. That the authority formerly exercised by the prescribed officer, who was either a master of the High Court, or a Probate registrar, or by the judge, to admit a poor person to the advantages of the Poor Persons Procedure should now be vested in committees of solicitors.

2. That the work of the reporting solicitor should be done away with, and that it should be for the committee to decide, on such evidence and after such inquiry as they think proper, whether a poor person should be given a certificate which would relieve him from the payment of all court fees of the litigation.

3. That to enable the work to be carried on the more easily, the procedure of the Divorce Registry should in poor persons' cases, except in one or two special particulars, be extended to the district registries.

4. That a Treasury grant of not less than £3,000 per annum should be paid to the Law Society to meet the expenses of the work which will have to be carried out.

We appreciate that the suggestion that the authority to admit poor persons to the Poor Persons Procedure, and to absolve them from the payment of court fees, should be vested in solicitors shows a welcome degree of confidence in our profession, and we believe that the abolition of official control will do much to facilitate the work which has to be done.

At the same time the work must involve a considerable burden upon the solicitors' profession—a burden which we believe that for the honour of the Profession they are willing to undertake.

Having regard to the resolutions passed by the provincial law societies and to the reception which the scheme has met with in London, we think that there ought to be no real difficulty in carrying out the suggestions of the report, subject to certain modifications, which we suggest hereafter, but it will be convenient that we should first indicate what arrangements we think should be made.

1.—The Staff.

It is out of the question that the business can be conducted by the present staff of the Law Society and we consider it desirable that a central office should be set up in London with an adequate staff to deal with London cases and those cases which have no domicile and to give any assistance required by the provincial societies. We are informed that the authorities will put the rooms, or some of them, now occupied by the present Poor Persons' Department at the disposal of the society, free of charge, and we think that arrangements might be made to take over, on terms, some of the officials of that department.

In the first instance, and by way of experiment, the staff should consist of one secretary, two assistants, two shorthand-

typists and an office boy, and we think that the expenses of the central office including salaries and stationery cannot be safely estimated at less than £2,300 a year. The duties of this office would be to see that the necessary committees were formed in London, to forward to the proper local law society any applications which might come to the central office which should be dealt with locally, to render such assistance as might be necessary to the local law societies, and to keep an account of the deposits paid in London and a general register of the cases dealt with.

The secretary will be under the control of a standing committee appointed by the Law Society, and his work should involve no responsibility upon the secretary of the Law Society or his staff.

2.—The Work of the Local Law Societies.

Each local law society will have to make arrangements for the provision of a secretary to deal with the work, at such remuneration as the number of cases will justify, but the amount should be fixed in consultation with the central committee in London. They will have to form a local committee or committees to deal with the applications, and to provide a rota of solicitors willing to undertake the conduct of the cases.

Arrangements will have to be made to keep a separate account of the money paid as deposit, and for the settlement by the committee at the conclusion of any case of the amount to be paid to the solicitor out of the deposit for his out-of-pocket expenses, and if thought fit to sanction a payment on account during the course of the proceedings.

We will now attempt to deal with some of the criticisms which have been raised with regard to the scheme.

(1) *The Solicitor's Liability for Negligence.*

It appears to be quite a reasonable suggestion that if a solicitor undertakes work for nothing he should not be exposed to an action for negligence by his client, but in the past there have been cases in which an action for negligence might have been brought. The protection of a solicitor from an action for negligence in cases of this kind is not a matter which can be dealt with by rules of court but would require legislation, but we should propose to suggest that no action for negligence in a poor person's case should be allowed to commence without the fiat of a judge or of the senior master.

(2) *Liberty to a Solicitor to Withdraw from a Case.*

The rules propose that a solicitor should only be at liberty to withdraw with the sanction of the court, but we think that provision should be made allowing the committee to permit a solicitor for good cause to withdraw from a case and for the committee to appoint another solicitor in his place, and that it should not be necessary for him to apply to the court for leave to withdraw.

(3) *The Provision of London and District Agents.*

The fact that proceedings can be conducted in the district registry will in most cases render it unnecessary to employ London agents, but it will be part of the duty of the central committee in London to provide a rota of London agents who will act in these cases when their services are required. Arrangements will have to be made for the appointment of agents in the district registry towns.

(4) *Power to a Solicitor to Discontinue or Compromise.*

There are serious objections to allowing a solicitor to compromise a poor person's case on his own authority, but it is suggested that the rules should provide that he should be at liberty to do so with the sanction of the committee.

(5) *The Deposit.*

The question of the amount of deposit was considered at length by Mr. Justice Lawrence's Committee, and it was thought that it was necessary to fix some *upper limit* to the amount of the deposit to prevent the possibility of any suggestion that poor persons would be prevented from taking advantage of the rules by the amount of the deposit to be found by them. The deposit is only intended to meet the necessary out-of-pocket expenses, *there is no sort of liability upon the conducting solicitor to find anything out of his own pocket in respect of these expenses*, and, should he in the course of a case find that the deposit would be insufficient to meet the expenses, it would be his duty to bring the matter before the committee, and to ask them to call upon the poor person to make further provision for the necessary expenses.

(6) *Expense of Working.*

We are unable at present to form any satisfactory estimate of the expense of working the scheme, until the suggestions we have made above are dealt with, but the £3,000 will be by no means sufficient. We think that, if the Law Society

and the provincial law societies undertake the work, the Treasury should give an assurance that they will provide sufficient to cover the expenses of working the scheme during the first two years of working, and that after that period a more accurate estimate of the amount required can be formed and provision made for the necessary further grant.

It is the question of the costs of the establishment that causes us the greatest difficulty. Your committee, so far as they can at present estimate, are of opinion that a sum of not less than £6,000 per annum will be required.

We have had under consideration the question whether it would be possible to arrange with the authorities that the Law Society should take over on loan the present head of the department and a sufficient staff to assist him, in which case these officials would be paid by the Government and would retain the rights, as regards pensions, etc., which they now have. They would be under the control of the committee of the Law Society, and in the course of a year or so it would be seen whether this arrangement would work satisfactorily, and what, if any, alteration was necessary.

In addition to the salaries of the officials there would be the expenses of postages and of stationery, which would probably amount to about £400 a year, but the equipment of the office should be handed over with the staff.

(7) *Assize Towns.*

A suggestion has been made that as part of the present scheme the list of assize towns at which undefended divorce cases may be dealt with should be extended so as to include Bristol and some other towns. Whilst no doubt, if such suggestion could be carried out, it would be in accordance with the general idea of decentralization upon which the report made by Mr. Justice Lawrence's Committee is based, the trial of other than poor persons' cases is beyond the scope of our reference, and we therefore refrain from further dealing with this suggestion.

We consider that the decentralization suggested by the report will facilitate the work which is to be done, and we annex to this report a statement which Mr. Hassard-Short has been good enough to prepare, showing the number of cases in each district. The numbers given are not of the cases allowed to proceed, but of the applications.

No doubt in the working of the scheme many minor difficulties will present themselves, which at present it is impossible to foresee, but the whole principle of the scheme is that

the powers and procedure of the various committees should be left as far as possible unrestricted, and we think that, if these committees will avail themselves of the assistance of the local organizations, such as poor man's lawyers, already in existence, and of the local knowledge of which they will have advantage, they will be able to obtain the necessary information and help to enable the scheme to be carried out to the credit of the Profession.

(8) *Appointment of the Committees.*

There can be no doubt that in nearly every instance the Lord Chancellor will approve the nomination of the gentlemen selected to act on the committees, and the reason why the report suggests that his approval should be obtained is that it was thought that this would give the committees greater authority and a more definite position. It must be remembered that the committees are to have power to absolve the poor persons from the payment of court fees, and it is therefore desirable that they should have some official position.

Apart from the details of administration, the only material points in this report which are important from the point of view of the poor are (1) as to the staff, and the absence of local offices (Recommendations 1 and 2), and (2) as to the out-of-pocket expenses of conducting solicitors (Recommendation 5). As to (1) it is suggested that a London office similar to the Poor Persons' Department should be created, having more or less the same staff. Apparently the only recommendation for the country is that each law society should provide a secretary, apparently to help the reporting and certificating solicitors, but no recommendation is made as to any provincial law society establishing an office or bureau for the poor.

As to (2), the arrangement suggested as to the out-of-pocket expenses, leaves the position of the conducting solicitor even more obscure than it was left by the Report of the Poor Persons Rules Committee, which suggested a maximum limit of £10.

The report under consideration states " there is no sort of liability upon the conducting solicitor to find anything out of his own pocket in respect of these expenses, and should he in the course of a case find that the deposit would be insufficient to meet the expenses, it would be his duty to bring the matter before the committee, and to ask them to call upon the poor person to make further provision."

But as has been explained, the out-of-pocket expenses of a

poor person's matrimonial suit may exceed £50. If the maximum deposit is to be £10, as suggested by the Report of the Poor Persons Rules Committee, where are the other out-of-pocket expenses to come from? The matter is left very obscure and very vague in both reports—perhaps intentionally so. But is that fair, either to the poor, or to conducting solicitors? Even charity—quite apart from justice—could not flourish under such conditions.

Summary of the present position of the poor in legal matters in England, having reference to the Report of the Poor Persons Rules Committee.

More than a year ago a short article was written by a Poor Man's Lawyer, explaining the constitutional rights, and the need of the poor for legal help, and prophesying that the Poor Persons Rules Committee could find no solution of the problem presented by the Poor Person Rules, unless the committee considered the *whole* problem of legal aid to the poor, in all its different aspects.

That article, set out below, without exaggeration, baldly states the position, which does not seem to have been much altered, except as to administration, by the Report of the Poor Persons Rules Committee, or the Report of the Special Committee of the Law Society:—

Equality of justice, and particularly equality in the administration of justice, is the proper function, the very foundation of government. Where a man has not the means to pay for legal advice, or the means to pay, in whole or in part, for professional assistance in civil litigation, or in defending himself in criminal prosecutions, he does not get equal justice with a rich man. It is unarguable that in most cases the assistance of a solicitor is necessary.

Everyone recognizes the need for medical help. It is so obvious. Aid is not there supplied by trade unions, political parties, settlements or charities, but by medical hospitals. Very few people in this country realize the need of the poor for legal help, or the magnitude, urgency, and the far-reaching effects of the absence of legal help to those who cannot afford to pay for it. It is not so obvious as the medical need.

The " man in the street " has some sort of hazy idea that the poor can go to a magistrate, or to a settlement, or charitable institution for advice; that he can get civil litigation undertaken for him free—do we not read it in the papers?—at the Poor Persons' Department; and that for criminal matters he can be defended under the Poor Prisoners Defence Act. But the general public does not realize that if a poor man cares to discuss his private affairs in open court, and goes to a country magistrate for advice, he is going to a man who has himself to get legal advice from a solicitor; nor is it

generally known that if a poor man does apply to a magistrate for advice, he is generally told to consult a solicitor, or in London, to go to one of the settlements. In fact, in this country, the Government makes no provision for giving legal advice to the poor ; and the proper provision of advice would cover fifty per cent. of their legal needs.

As to the legal help given by the Poor Persons' Department, the Poor Persons Procedure Rules only apply to civil actions in the High Court and Appeal Courts. No help at all is given in the County Court. These Rules only apply to poor men who are rich enough to pay or deposit £5 at least —sometimes it amounts to £20—at the Courts. Then the Government provides a Poor Persons Department (really a clearing-house) and remits Court fees. The legal profession is supposed to do all the work of this litigation for nothing, except out-of-pocket expenses, because if a poor man wins his case he is not allowed to receive under these Rules any costs, except in very rare cases where a special order is made. Fortunate, therefore, is an unsuccessful rich man who happens to have as his opponent a successful poor man, for he escapes the payment of the poor man's costs. Is there any wonder that these Poor Persons Procedure Rules have broken down, and that there are many poor persons' cases waiting, with no solicitor willing to take them up ? Could anything else be expected ? It is believed that there is no other country in the world which has such an absurd procedure. But even if the Poor Persons Department had not broken down, it only affects less than three per cent. of the needs of the poor.

As to the so-called dock brief and Poor Prisoners' Defence Act, they are practically valueless, partly because of defects in administration, partly because the remedy is not understood, but chiefly because the help comes too late, and is not given as a matter of right. In the Police Courts the Government provides no help in any shape or form to a prisoner there prosecuted.

Owing to the neglect of successive Governments to make any real provision for making justice equal, various outside bodies and certain devoted altruistic lawyers, in certain places, and in a very haphazard manner, are endeavouring as a matter of charity to give the poor legal advice gratuitously. But these charitable efforts only touch the fringe of the problem. They do not, and cannot, cover the whole field, or give equal justice, even so far as legal advice only is concerned.

American writers consider the absence of legal help to

those who are not able to afford to pay for it, to be an outstanding type of evil, similar in its results to vice or disease. They have also calculated that the source from which industrial unrest springs is . . . " 3, the denial of justice." (Manley Report of United States Commission on Industrial Relations. See also American Judicature Society Bulletin viii.) May it not be that the " class feeling " of a victim of injustice who has been unable to pay for legal advice or assistance, is even more harmful to the community than the actual wrongs in individual cases ?

In England this problem has been intensified in recent years by the complexity and the loose drafting of modern Acts of Parliament, so that sometimes the judges themselves cannot construe them.

This is the position in England at the present time :—Less than ten per cent. of the legal needs of the poor are assisted by the Government ; the other ninety per cent. of need is provided for only by chaos or charity. Owing to the breakdown in the Poor Persons Department, a Government Committee has been appointed to report on the breakdown in this small fraction of help which the Government is supposed to give. And that Committee can find no remedy even for that two per cent. of need without going into the whole question of law and poverty ; and even if they could find a remedy for that fraction of need, there would still remain ninety per cent. of the legal needs of the poor unprovided for. The late Government refused to extend the scope of the inquiry by this Committee. Will the present Labour Government repeat the same blunder ? If they do, it will show that they also have failed to realize the desperate need of the poor for legal help ; that they are weighed down by the professional etiquette of lawyers, who insist on treating legal aid to the poor as charity, and not as justice ; and that they have no real understanding of the fact that the poor, or those who cannot afford to pay for legal advice or help, cannot, without assistance, get equal justice, which they are constitutionally entitled to under Magna Carta (Para. 40), and which enacted " To no one will we sell, to no one will we deny or delay, right or justice."

CHAPTER VII

THE MISTAKES MADE AND SUGGESTED IN ENGLAND WHEN ATTEMPTING TO SOLVE THE PROBLEM OF LEGAL AID TO THE POOR

The two fundamental mistakes—Bar education and etiquette—Charity—English rigid poverty test limit—Law Society control—Absence of conciliation out of court—Denial of justice to persons who can pay part of costs but not whole—Mistakes made when State Aid given—Poor Prisoners Defence Act, 1903—Report of Committee to Enquire into Poor Persons Rules, October, 1919—Poverty test made much more stringent—Recommendation that conducting solicitors should not receive the whole out-of-pocket expenses—Report of Poor Persons Rules Committee, February, 1925—On a minor point, suggesting no rigid poverty test limit—Report recommends a deadlock for out-of-pocket expenses—Mr. Justice Finlay's Committee not allowed to consider the whole problem—Compulsory legal service is bad in interests of poor—Semi-official systems are possible—Law Society Report, March, 1923—Treasury Rule or Minute prohibiting public expenditure on legal aid—Suggested remedy by Magistrates' Association—Mr. P. Harrington Edward's Scheme—Sir George Fowler's Scheme—Impossible to tack legal aid on to National Health Insurance—Impossible to force voluntary organizations—Summary of mistakes made in England.

In England, at any rate in recent times, there has been no understanding of the fact that the poor, or those unable to pay for the necessary services in order to secure justice, have a constitutional right, in common with all other classes of the community, to the equal administration of justice. And also, at any rate in recent times, there has been no real understanding that the various aspects of the problem are so closely interwoven that the problem must be solved as a whole, or it cannot be solved at all. It is because the problem has never in England been even considered as a whole, that we find such curious anomalies, hardships, and absurdities, in the very limited legal aid that is now given to the poor in England. A special memorandum has been written with regard to that, and is set out in Chapter XI. What legal aid is given in England, whether by the State, or by volunteers, is given as a matter of discretion—having the character of charity—and not as a matter of right. These are the fundamental root reasons for the mistakes made in England, when trying to provide for the legal needs of the poor.

The two fundamental mistakes made in England, when trying to solve the problem.

The point of view from which the problem is regarded in recent times is not the proper point of view. If that point of view has not been charity, then so far as the English Bar (such an immensely powerful body, because from it come most of our legislators, and all our judges) is concerned, the point of view is the education of young members of the Bar without supervision. One does not find youngsters in medical hospitals getting practice without supervision. And where one is getting solicitor volunteers, many of whom are, in practice, not acquainted with the special branch of law, where the barrister is expected to be a specialist, the result is disastrous. It is a case of the blind leading the blind. It may be that it is because of this desire to educate young members, that the Bar has so steadfastly set its face against the payment of any fee to counsel conducting under the Poor Persons Rules. It is submitted that the point of view of education should not even be considered, should not be taken into account at all, when considering what is necessary to be done in order to make the administration of justice equal.

Bar Education and Etiquette.

Then there is the point of view of Bar etiquette. The Bar has set its face against payment of fees according to speculative results—in short, the American contingent fee. And this system is very much criticized in Mr. R. H. Smith's book, *Justice and the Poor*. These criticisms could not apply to the English Bar, because there is no fusion between the two branches of the profession in England, and a barrister has no opportunity of contact with the lay client. They could only apply to the English speculative solicitor. But if Bar etiquette cannot be reconciled to the Scotch custom of taking fees in successful cases for poor persons, and claiming no fees where the poor person's case is not successful, either the State must be put to a very great expense in providing fees for counsel in unsuccessful poor persons' cases, or the older and more competent counsel will not, as a rule, act for poor persons, because they will not be able to afford to act gratuitously. The Bar etiquette as to fees, therefore, stands in the way of a proper voluntary system of legal aid to the poor.

There is another aspect of Bar etiquette about fees, so far as they affect poor persons' cases. A barrister expects his fee when his brief is delivered to him, irrespective of the fact whether or not the solicitor has received the fee from his client. For these and other reasons, no doubt, the Bar has been in favour of only gratuitous service by counsel. In the

interests of the poor it is hoped that the Bar may be able to modify its etiquette, so far as poor persons' cases are concerned. There have been strong observations by very eminent individual members of the Bar, (1) as to the uselessness of counsel acting without a solicitor's ordinary preparatory work, (2) as to members of the Bar, of less than three years' standing, representing a poor person in court without supervision.

The great difficulty about the etiquette of solicitors is, that if a solicitor sought out the poor, he might infringe the rule against touting or advertising. Or if he employed, or became associated with, unqualified persons, he might infringe other very proper rules laid down for the ordinary practice of a solicitor. Perhaps the most serious rule as to a solicitor's etiquette, in so far as it affects a solution of the problem of legal aid to the poor, is that it is improper in many cases for a solicitor to give any part of his costs to an unqualified person or organization.

It is submitted that in the interests of the poor, and so far only as they are concerned, the etiquette of both branches of the profession should be brushed aside, and not even considered, if a proper voluntary or State organization is formed to administer and control legal aid to the poor.

Charity. Charity may be, and generally is, kind. But kindness and justice are two different things. It is impossible to exaggerate the devotion and self-sacrifice of both branches of the legal profession in giving the poor legal aid, as charity. The poorest of the poor would not like to work under the conditions that some of these lawyers do their charitable work. Almost always they are tired men, who have already done a full day's work in their ordinary business, and who, without any recognition, practically entirely unnoticed, go down in the evening to some outlandish place, generally without a meal, or any opportunity of getting one in such localities, without any clerical assistance or their ordinary tools of trade, and generally under every conceivable difficulty, to work at great pressure and speed, in the hope that they may be able to get back to their ordinary homes before midnight.

And charity may be long-suffering, but however willing a lawyer may be, he cannot produce good results without the ordinary clerical assistance that is customary in the profession. A barrister acting gratuitously in court, without the ordinary assistance of a solicitor; or a solicitor acting gratuitously and even paying out of his own pocket part of

the out-of-pocket expenses, with only a young inexperienced counsel acting in court ; or a solicitor acting gratuitously in court proceedings, which necessitate interlocutory proceedings, or payment to the other side for copy documents, where, because the poor person cannot pay the out-of-pockets, the interlocutory proceedings are not taken, and the copy documents are not obtained ; or a husband seeking divorce who can find his own out-of-pockets, but cannot also pay or secure his wife's costs ; or a wife, having children, but no income, seeking divorce, and who can get no relief or aid, because her husband's income exceeds £4 a week ; in such cases charity availeth not. There remains only the long-suffering.

The English rigid poverty test limit.

It is curious that England is the only country, with the exception of Spain, so far as can be discovered, that has a rigid poverty test limit as a condition of granting legal aid. And even Spain is much more liberal than our country in fixing that rigid limit. The reason for fixing this rigid limit is, of course, partly to save trouble to the authorities, but mainly because those in authority have considered the problem from the wrong point of view. They have not had clearly in mind that the object to aim for was to give legal aid in every necessary case, whatever might be the peculiar or unusual circumstances of that case, to enable every poor person to have ordinary and reasonable facilities for getting justice. Circumstances vary enormously. One evening, in 1925, a poor man's lawyer was consulted by a married woman with several children, whose husband had been persistently cruel to her. She feared to leave him so as to get summary relief in the Police Court. She was entitled to a divorce for matrimonial offences. The man was earning £4 5s. a week, so his wife could get no aid under the Poor Persons Rules. In another case which turned up the same evening a married woman, without children, had been deserted for eight years by her husband, who was living with another woman and had children in his new home. He was supposed to be earning £4 a week. His lawful wife was earning £2 3s. a week. As she had no children, the rigid poverty test for her would be £2 a week, quite apart from the fact that the Poor Persons Rules insist on the joint income of husband and wife being taken into account, where the wife is seeking divorce. This woman felt her position acutely. It was known locally that she was a deserted married woman. That affected her so that she never went out of doors, except to her work. The poor man's lawyer had to advise that at

present, though there might be hope in the future, no legal aid could be given to her under the Poor Persons Rules. Now such advice may have to be varied slightly if the new rules come into operation.

In another case which turned up in the same week, a married woman had deserted her husband, taking with her their only child, and going to a foreign country. The man was earning £3 a week and his wife had a separate and substantial income, but as he had no one dependent on him, the poverty test for him would be £2 a week, even if the joint income rule did not apply, and no legal aid could be granted to him under the Poor Persons Rules. In another case which came before the same poor man's lawyer, a man taking nullity proceedings, and having been admitted as a poor person under the Rules, and having already found and paid £15 for out-of-pockets, had an order made against him that unless he found another £5 for his wife's costs his suit would be stayed and eventually dismissed. He turned up again the next evening at another place, where the poor man's lawyer also happened to be giving free advice, and wanted to go into the whole story again. He was so desperately in earnest that he would have almost sold his soul for that £5. But no further aid could be given to him under the Poor Persons Rules.

Before the war, a lawyer noticed a crippled child in a main street of a large town, kneeling on the ground, selling flowers, in all weathers. He was crippled and riddled with tuberculosis. If he had not sold all his flowers he would still stay there long after his usual tea-time, until all had been sold. The lawyer went to the child's home, and found that he was the eldest son of a family of six children, living with their parents in two rooms; one an underground, small kitchen with no window ventilation other than a street grating, where the atmosphere was so shocking that the lawyer could not stay there without smoking; and the other, an attic where the six children and their parents slept, most of them, with the cripple, sleeping on the floor. Except for a small sum received from the Guardians, that crippled child was the sole support of that family of eight persons. The children were riddled with tuberculosis. The father had been permanently injured in an accident, and was so crippled that he could not hobble more than one hundred yards.

The whole cause for this dreadful state of things was the absence of legal aid to the boy's father. Probably ten

minutes' advice from a competent lawyer would have been sufficient. He had been injured in an accident which both he, his employers, and their doctor, thought to be temporary. He could not read or write. His story was that his employers, conditionally on his not going to a solicitor, were going to make him such a generous offer that they did not want it talked about, or used as a precedent. It was a workman's compensation case, and at that time the court, when approving an agreement, was not necessarily bound to consider the *quantum*. Believing his incapacity to be temporary, the man signed the agreement, and his wife went round to the court and said what the employer told her to say, *viz.*, that her husband approved the agreement and settlement, which provided that he should receive a lump sum down of less than one-third of what it would be proper to pay for a permanent injury. He had never been X-rayed. The lawyer had him and his crippled son examined by a most eminent surgeon, and the advice given was that nothing could be done for either of them—it was too late. The lawyer then saw the Registrar of the County Court, the official who generally approves such agreements and whom he personally knew. After hearing the facts of the case, the Registrar exclaimed, " Scandalous ! " But, said the lawyer, you are supposed to have approved it. The Registrar said he knew that was inaccurate, because he had never heard of the case. So he sent for the court files. And it appeared that the approval had been given by his deputy, the Chief Clerk. Then the lawyer went to a Law Library, and went down to the origin of the doctrine, tracing it up, and he found that, as more than six months had elapsed since the court's approval had been given, nothing could be done, except on the ground of fraud, and that, if provable, was doubtful. It was again too late. Does not this case show that even when the legislature has passed the most excellent laws, protecting an injured workman against himself by requiring the court's approval to any agreement he may enter into, all such precautions may be useless if the workman, and the court, are not assisted by a lawyer. The absence of legal aid to the poor is one of the root causes of many evils.

If legal aid is to be really effective to the poor there should be no rigid poverty test limit : but whatever is absolutely necessary, in the particular circumstances of each case, to secure justice, should be provided. Each case should be judged on its merits, and no aid should be given that is

not really absolutely necessary, under the particular circumstances of each case.

If the administration and control were in the hands of the law societies, it would be quite certain that no person would be improperly admitted to take or defend legal proceedings. The law societies would have local knowledge of the position of poor persons. It would be against their professional interest to admit any poor person that was not entitled to legal aid. The difficulty about the law societies exercising control is that some poor persons might be refused legal aid because of too strict a professional attitude. But, owing to the high moral standard of the law societies, to the very excellent way in which the London Law Society has discharged those semi-public duties which have been entrusted to it, there is no doubt that if the law societies definitely undertook—regardless of a rigid poverty test limit—to see that no one was denied justice, because of their poverty, that undertaking would be honourably fulfilled, the result being that anyone refused legal aid would, as a matter of course, get his case taken up in the ordinary way by one of the solicitors connected with the Law Society. It is believed that the law societies are in favour of retaining the present rigid poverty test limit, for their responsibilities are thereby reduced. But equality in the administration of justice does not lie in that direction.

Law Society Control.

Neither the authorities nor any voluntary organization in England seem to have appreciated the great importance of *conciliation out of court*. Properly applied, such conciliation would enormously reduce the number of poor persons' cases, and the expense connected with giving legal aid to the poor. On the contrary, every hindrance that could possibly be invented to prevent conciliation seems to have been in favour with those in authority. And under the Poor Persons Rules no poor person, nor any solicitor for him, may discontinue, settle, or compromise proceedings without the sanction of the court or a judge. As has been already mentioned, conciliation out of court is practically unknown in England.

The absence of conciliation out of Court.

Another fatal mistake made in England, arising from the same false doctrine that legal aid is a charity, is that there is objection to a poor person paying towards costs and expenses as much as he can reasonably afford. There are many poor persons who can afford to pay something towards the ordinary costs and expenses of litigation, to whom it is quite impossible to pay the whole of the costs, and who are therefore denied justice. Their income test or their capital test—it does not

Persons who can pay part but not the whole costs of legal proceedings are denied justice.

matter which—is above the limit fixed. Yet their means are not sufficient, unaided, to enable them to institute or defend legal proceedings in the High Court. In addition to these poor persons being denied justice, the institution (whether it is State or voluntary) loses money which would thereby come to it and help to support the general object of the institution. The only objection which can be seen to such an institution taking profit costs, arises from the solicitors' professional etiquette, that costs should not be taken by anyone other than for the personal benefit of the solicitor, or the firm doing the actual work. Possibly if the law societies administered legal aid to the poor, there would not, in cases so administered, be any objection to the Law Society taking, for the general purposes of legal aid, any profit costs which could be, and would be, paid by poor persons able to pay part but not the whole costs of legal proceedings. It is now common practice for medical hospitals to insist on the poor paying what they can afford towards the expense of their treatment in the hospital. There seems no good reason why the institution responsible for administering legal aid to the poor should not adopt the same practice. In no other way can justice be obtained by these unfortunate poor persons whose income, or capital, happens to exceed the fixed rigid limit.

Mistake of using poor as means to educate young lawyers.

The good judgment of the Bar is obscured by the desire to give young barristers court experience, without an older man's supervision and responsibility. And the point of view of the law societies is liable to be obscured by the desire to give education and experience to articled clerks of the Police or County Court type at Poor Man's Lawyer Meetings. Unqualified and inexperienced embryo solicitors are often used without real supervision, to give free legal advice to the poor. There would be no objection to both these practices, if there were proper supervision by a barrister or solicitor "learned by his discretion," who would be responsible for the work of these young lawyers. Without that, such representation, or such advice, is of little value, and does not in any degree give the poor that equal administration of justice to which they are entitled.

Mistakes made where State Aid is given.

For the purpose of testing the mistakes made by the State in granting legal aid to the poor, it will be useful to consider the reports made and eventually acted on, when regulations were made for the granting of such legal aid; which, it will be remembered, is in England only provided by the Poor Prisoners Defence Act, 1903, and the Poor Persons

Rules. Before the Poor Prisoners Defence Act was passed a select committee was appointed to take evidence and to report. A copy of the Report and Appendices will be found in the Appendix; both are valuable, not for their recommendations, but for certain findings of fact. There have been two Reports as to the Poor Persons Rules, by departmental committees presided over by Mr. Justice P. O. Lawrence, but the committees being departmental, no copy of the evidence taken is published. Both Reports appear in the Appendix, and are valuable for the purpose mainly of comparison—the one with the other.

The Poor Prisoners Defence Act provided that a very limited class of poor prisoners might be defended in some of the criminal courts, by counsel and solicitors, at the public expense, but the fees and expenses allowed, by the Regulations of the Secretary of State dated 30th December, 1903, were so small that counsel and solicitors of standing could not afford to take up such cases, and the Act was so worded as to restrict to the smallest possible compass the number of poor prisoners who could get legal aid under it. The Poor Prisoners' Defence Act, 1903.

(*a*) Any legal aid given under the Poor Prisoners Defence Act is discretionary. No legal aid can be given "as of right" under the Act. (*b*) The Act does not apply to the Police Courts, where a poor prisoner needs legal aid more than anywhere else, and where the bulk of criminal proceedings affecting the poor take place. (*c*) The legal aid given under the Act can only be given at Assizes or Quarter Sessions, to a prisoner who, after first having been warned that anything he says will be taken down in writing, and may be used as evidence against him, must, immediately after such warning, in the Police Court and in no other place, set up his defence. (*d*) The discretionary right, affecting, as it does, no prisoner in the Police Court, and only, according to Mr. Justice Grantham, 10 per cent. of prisoners in the other Criminal Courts, must only be exercised when all the following conditions exist: (1) regard must be had to the *nature* of the defence set up by the poor prisoner, (2) that defence must be disclosed in the Police Court, (3) that it is in the interests of justice that the poor prisoner should have legal aid, (4) the accused must not have been committed on depositions taken only in the Coroner's Court, and (5) that his means are insufficient. When any one of these five conditions is wanting, the very limited and attenuated discretion given by the Act cannot be acted on.

The greatest defects of this Act are, that the legal aid

obtainable under it is not given as of right, and that it comes to a poor prisoner too late to be of much service to him. The Act is very useful for educating young, inexperienced barristers. To suggest that it universally helps to make equal the administration of justice in the Criminal Courts in England, is really a caricature.

Report of Select Committee on Poor Prisoners Bill.

The second paragraph of the Report of the Select Committee appointed to report on the Poor Prisoners Bill, sets out the principles which should have been applied, if those reporting had had in mind that the object of the Bill should have been to make the criminal administration of justice equal. These principles were :—

(1) That where the prosecution is conducted by experienced solicitors and counsel [*Note.*—A police prosecution is worse for a prisoner.], it is contrary to the ordinary requirements of justice that no legal advice should be given to the prisoner.

(2) That a prisoner without means ought to be in no worse position to establish his innocence than a prisoner who is able to pay for legal assistance, and that the assistance of solicitor and counsel is of great importance for this purpose.

(3) That although it is the business of the judge to see that the prisoner's defence is properly developed, and with that object in view to cross-examine the witnesses for the prosecution or to re-examine the witnesses for the defence, including the prisoner, if he gives evidence and is cross-examined, yet the judge is not in a position to do this as effectively as counsel *properly instructed*, because he has no opportunity of communicating with the prisoner and ascertaining the details of his defence, nor has he usually sufficient materials for the cross-examination of the witnesses of the prosecution. Furthermore, that especially in the cases of Chairmen of Quarter Sessions, who are not lawyers, the difficulty of their task is greatly increased in the absence of legal assistance for the defence.

(4) That in Scotland the widest application of these principles had been in successful operation for many years.

In paragraph (3) of the Report it is stated that most of the witnesses agreed as to the importance of these considerations, but some of them disagreed on the following most *remarkable* grounds, which should not in the least have affected the minds

of those reporting, and which should not even have been considered, if the object in view was to make the administration of justice equal :—

(1) That cases of the conviction of innocent men are very rare, and that substantial justice is done by the present system.

[*Note.*—In the first place, how could it be possibly known that there were very few cases of conviction of innocent men ? Some of the witnesses explained that although that was their opinion, there was no possible way of finding out with certainty how many innocent prisoners had been convicted. It is submitted that if there were only *one* innocent prisoner convicted because of the want of a proper defence, such steps should have been taken as would prevent even one innocent prisoner from being convicted.]

(2) That the number of cases to be tried, especially in London, was so great that it would be impossible to dispose of them in the time available, if a much larger number were defended by counsel, without a large increase of the present judicial machinery.

[*Note.*—Was such a reason ever given before in any country in the world for denying justice to some of the citizens of that country ? In practice, in America it has been found that the proper provision of legal aid greatly shortens the time taken up in trials of prisoners. In England it is notorious that litigants acting in person, if given rope, and if possessed of self-assurance, waste the time of the court to a much greater extent than if they were represented by counsel. But even if the result were that more time would be taken over trials, and that the judicial machinery would have to be greatly increased, it seems to be shocking and contrary to every requisite of good government that that should be a reason for denying justice to the poor.]

(3) That nearly forty per cent. of prisoners tried pleaded guilty under the then present system : [*Note.*—They were probably so advised to plead by the police.] and that it would not be worth while to *tempt* them with the offer of a solicitor and counsel to try for the chance of an acquittal. The last consideration was thought to be of considerable force by the Committee, and they recommend that the operation of the Bill should be

limited to cases in which, having regard to the nature of the defence raised by a prisoner [*Note.*—How can he raise it if undefended?], it appears to be desirable in the interests of justice that he should have legal aid.

[*Note.*—So this was the real reason why the Bill did not give any legal aid at all to the very great majority of poor prisoners. And the reason given is contrary to American experience. There, a prisoner obviously guilty, is advised so to plead by the Public Defender.]

Paragraph (7) of the Report mentions that it is a matter of great importance that a solicitor, as well as counsel, should be assigned to the prisoner, because the *basis* of an effective defence generally involves preliminary communication with the accused, obtaining of evidence for the defence, and inquiry into the case of the prosecution. . . . "Your Committee came to the conclusion that, in the absence of such assistance, it would be impossible to secure the voluntary help of sufficient solicitors throughout the country to work the provisions of the Bill. . . . It was strongly urged by several witnesses that the assistance of any but *competent and experienced* solicitors and counsel was *worse than useless*, and that they should be *remunerated* at the public expense."

[*Note.*—A most valuable finding in the interest of justice as opposed to charity.]

In paragraph (8) the Committee recommend that both solicitors and counsel should be instructed, and should be paid for their services.

The Minutes of Evidence taken before the Committee are valuable to anyone wishing to make a study of this question, particularly the evidence of Sir H. Poland, K.C., and of the Director of Public Prosecutions, who in the course of his work, would be much brought into touch with the Police and County Court type of solicitor having a small practice, and on whom primarily must devolve, in the provinces, the work of conducting civil proceedings, and of defending in criminal proceedings.

This Report and this Bill are an admirable illustration of the way in which legal aid to the poor has originated in this country. Here, in the evidence, and in the Report itself, are all the reasons for making the remedy real and effective. And here set out in the Report itself, are the reasons which produced such an anæmic, attenuated, extraordinary, apology for a remedy, denying in actual practice all legal aid to over ninety per cent. of poor undefended prisoners.

The Committee to Enquire into the Poor Persons Rules (hereinafter called First Rules Committee), presided over by Mr. Justice P. O. Lawrence, made their Report in October, 1919. The committee was departmental, and therefore no note of the evidence taken before it is available. The Report is valuable, not because of its recommendations, but because of its findings of fact, and especially for the purpose of comparison with the Report of the Second Rules Committee, referred to later on. The recommendations relate to matters of administration, trivial in their nature, but which do make better what there is to administer under the Poor Persons Rules—except as to two vitally important matters, when the recommendations make the position of poor persons seeking aid under the rules very much worse than it had been previously.

The Report of the Committee to Enquire into the Poor Persons Rules (Oct., 1919).

It will be remembered that the Poor Persons Rules relate to High Court actions and certain appeals from other courts; and that they affect probably not more than two per cent. of the total legal needs of the poor. It was found by the Committee that there had been certain minor abuses: (*a*) several witnesses thought that advantage had been taken of the Rules by people who could afford to pay ordinary costs; (*b*) there had been delay on the part of conducting solicitors in several cases; (*c*) a certain class of solicitor had arisen who specialized in poor persons' cases, and undertook too many of such cases; (*d*) the taxing officers had allowed conducting solicitors a sum for office expenses; (*e*) reporting solicitors were taking a small fee for making a report.

To meet abuse (*a*) the following recommendations were made, and subsequently adopted:—That the reporting solicitor should require the applicant in matrimonial cases to swear to his means, and give him a warning; and further, that the reporting solicitor should personally see the applicant, and that the conducting solicitor was to report at once to the prescribed officer if at any time he discovered that the poor person had means beyond those disclosed by him to the reporting solicitor. One would have thought that such recommendations would alone have been sufficient to prevent a poor person fraudulently taking advantage of the Rules. Unquestionably such regulations would be quite sufficient, if the administration and control of legal aid were committed to the law societies. But the Committee, from the point of view of equality of justice, made here their first mistake.

In addition to the other recommendations, they suggested that the poverty test should also be made more severe.

Poverty test made much more stringent.

Previously there had only been a capital test, *viz.*, up to £50, and in special cases up to £100. It was recommended by the Committee that there should be an additional test as to income, *viz.*, up to £2 a week, and in special cases up to £4 a week. That is, the Committee suggested a double poverty test, and thereby still further restricted the number of genuine poor persons who were entitled to legal aid under the rules.

To meet abuse (*b*) the conducting solicitor was to report annually to the Prescribed Officer.

To meet abuses (*c*) and (*d*) no out-of-pocket expenses were to be paid by poor persons direct to the solicitor, but were to be paid to the Secretary of the Prescribed Officers, who was to pay the proper out-of-pocket expenses of conducting solicitors. One would have thought that such a recommendation would alone have been sufficient to save any poor person from being charged too much for out-of-pockets. Unquestionably such regulation would be quite sufficient, if the administration and control were committed to the law societies. But again, the Committee, from the point of view of fairness, and practical politics, made the fatal mistake of cutting down real out-of-pocket expenses which had previously been allowed as genuine out-of-pocket expenses by the taxing masters, who are the officials appointed by the Government to decide all questions connected with costs. A solicitor must use stationery for his clients' work, and he must use clerks, whose wages he has to pay, to do clerical work. The Committee estimated these out-of-pocket expenses for stationery, copying and clerk's wages at £5, on an average, for each matrimonial case. By the amendment made in the Poor Persons Rules on this recommendation, conducting solicitors, who were giving gratuitous service, were also forced to pay out of their own pockets £5 on an average for each case they took up. Is it, then, so very remarkable that there are now, in September, 1925, over 400 cases of poor persons, duly admitted to take proceedings under the Rules, whose cases have favourably been reported upon by the reporting solicitor, but which cannot be brought before the courts for trial, because there are no conducting solicitors willing to take them up? Could anything else be expected?

Recommendation that conducting solicitors should not receive the whole of their out-of-pocket expenses.

This Report itself states as a fact (para. 38): "If a fund were established to provide for the expenses of poor persons' cases, a *wholly different* state of things would arise and the number of applications as well as of cases tried would no

doubt increase enormously." In another part of this Report (para. 33) it is said :—" The question whether an allowance ought to be made for office expenses is more difficult. If no such allowance is made it may result in nobody being found willing to undertake these cases." In spite of that knowledge, and in spite of foreseeing the probable result, the fatal recommendation is made !

To meet abuse (*e*) the reporting solicitor was not to be allowed to charge a fee for reporting. And as a reporting solicitor's work is exactly like counsel's work, and no difficulty would be found in getting sufficient quantities of either of them, the recommendation was right. As has been explained, the work of a reporting solicitor and the work of counsel is not continuous, or spread over a long period, nor does it entail any real liability, or generally any out-of-pockets. The conducting solicitor is in a very unfavourable position, and has a most thankless task, which brings him no reward, direct or indirect, but often much abuse from the poor person, and censure from the judge when the young barrister lets him down.

This whole Report is very interesting because of the facts contained in it. It will be especially interesting to compare these facts with the facts and conclusions mentioned in the next Report.

The Poor Persons Rules Committee (hereinafter called Second Rules Committee), also presided over by Mr. Justice P. O. Lawrence, and also containing three of the same members who acted on the First Rules Committee, made their Report in February, 1925. This Report, and the reasons for the recommendations made, cannot be properly understood without reading the Report of the First Rules Committee and carefully comparing the statements of fact, and the reasons for conclusions, given in both reports.

Report of the Poor Persons Rule Committee (February, 1925).

The most remarkable thing about the Report of the Second Rules Committee is that it deals only with administration, and with nothing else. It does not enlarge, or alter in any way, the *quantum* of legal aid, or the persons who are to receive it, except that in the proposed New Rules set out in Appendix IV to the Report there is suggested a valuable amendment of the old Rule, where a wife is the poor person and the test of poverty is the joint income of husband and wife. The proposed New Rule allows such a wife, without any poverty test limit, to be admitted to take or defend or be a party to proceedings as a poor person if " *it is reasonable* that the poor person should be so admitted." And there

follow proper proposed New Rules to prevent the abuse of this concession. One can only regret that the Committee did not have the courage to make this rule applicable to all legal aid given to poor persons. Had they done so, they would have gone a long way to *permanently* solve one of the main difficulties of the present system of legal aid in England. " Reasonable in the circumstances," is even wider than what has been, or will be, contended for. But by the new rule married women will be placed in a privileged position with regard to married men, which is quite illogical, unfair, and absurd. Why should not a poor—perchance twice poor—married man have the same right? All privilege is wrong. All those interested in the poor, and who consider their position in legal matters, quite apart from humanity, to be inexpressibly injurious to the whole country, would have been satisfied with a poverty test which enabled legal aid to be given to all poor persons who could not procure legal aid elsewhere, and who had not the means, in whole or in part, to pay for legal advice, and in court proceedings, the necessary fees, out-of-pocket expenses and costs. Of course, there should, as is suggested in the New Rule, also be a *probabilis causa litigandi* test as well, at any rate in civil litigation, in order to prevent frivolous litigation. Perhaps, after all, this Report in future years will become historical, because for the first time, so far as England is concerned, it suggests as to a comparatively very small matter, and puts forward in a very obscure way in a suggested rule, and not in the body of the Report, that legal aid can be given when reasonable in the particular case, apart from a rigid poverty test limit.

Proposed New Rules, on a minor point, suggest legal aid, without rigid poverty test limit.

But this concession, even if it were made universally applicable, is more than counterbalanced by this Report making the position of conducting solicitors even more difficult and unfair than it was before, by cutting down their legitimate out-of-pocket expenses. There seems to be little wisdom in enlarging the number of poor persons admitted to the benefits of the Rules, if at the same time you make the conditions under which this voluntary work is done more impossible than they were before. So that probably the ultimate result of this Report will be that less poor persons, in fact, will be able to get legal aid in the High Court. It will be remembered that the conducting solicitor (the lawyer who is responsible for, and has to provide the out-of-pocket expenses, without which the litigation cannot be conducted) is the corner-stone on which the whole of civil court aid must be based. Without him nothing at all can be done, whatever

rules or reports may be made. The reporting solicitor and the certificating solicitor are not so absolutely necessary.

Appendix III of this Report recommends, as part of the new-suggested scheme, that "Rules of Court should fix the *maximum* amount of deposit which the Committee might require any applicant to make at the sum of £5, and in special circumstances, the further sum of £5." Appendix IV of this Report, setting out the proposed New Rules, provides that the Committee may require a poor person "to deposit with them, or as they shall direct, any sum of money not exceeding in the first instance £5 to cover the out-of-pocket expenses of a conducting solicitor, and if such deposit shall be found insufficient, such further sum not exceeding £5 as the Committee may direct." What is to happen when the out-of-pockets, as they generally do, exceed £10? The Report, suggested Scheme, and suggested New Rules, are absolutely silent as to that. In the First Rules Report it is stated, (1) that the main difficulty is as to the out-of-pocket expenses, (2) that the out-of-pocket expenses in an ordinary matrimonial suit amount to £10 and in a nullity suit to £25, (3) that it is only waste of time and labour to have poor persons' cases started, and then have to drop them for want of cash, (4) that unless a fund is constituted for payment of out-of-pocket expenses, the really poor or quite destitute persons have no chance of availing themselves of the Rules to obtain divorce, and (5) that if the whole out-of-pocket expenses of a conducting solicitor are not allowed "it may result in nobody being found willing to undertake these cases." In the case of a husband, in matrimonial proceedings, he has generally to pay or secure his wife's costs. In cases of service out of the jurisdiction, and of taking evidence out of the jurisdiction—there are the further out-of-pockets to pay, *viz.*, £5 for service and £20 for obtaining evidence. In a nullity suit by a man, when service is made and evidence obtained out of the jurisdiction, the total out-of-pocket expenses must come to £50, exclusive of court fees, with the additional out-of-pockets for his wife's costs—say, at least £50, amounting together to £100. In a nullity suit by a wife, where service is made and evidence obtained out of the jurisdiction, the total out-of-pocket expenses could not come to less than £50, which obviously could not be provided by her husband if he were a poor person. And this Report, in its Appendix, actually suggests that the maximum deposit allowed to be paid by a poor person must not exceed £10. What possible use can there be in granting the very

Report recommends a deadlock for the out-of-pocket expenses.

real concession to wives as to the poverty limit, when the Rules are so extraordinarily drawn, that after being admitted, her case cannot be conducted? Is it suggested that the altruistic and harrassed conducting solicitor should find out of his own pocket £90 or £40 for out-of-pocket expenses not allowed by the Rules, for each case where service is made and evidence is taken abroad? Or is it expected that the out-of-pockets will fall into the pockets of the poor, like manna? Such considerations as these show the utter hopelessness of fixing rigid limits. The remedy of course is, as was suggested when the Poor Persons Rules were first brought out, that the Government should provide a fund for the payment of a poor person's necessary out-of-pockets. The only alternative to that is that, a fund should be formed, not by way of tax on one small section of the community, but by voluntary subscriptions and donations obtained from the whole community, in the form and way that subscriptions and donations are obtained by voluntary hospitals. These two features of the Report of the Second Rules Committee —the precedent set for admission to legal aid apart from a rigid poverty test limit, and the limitation of the conducting solicitor's out-of-pockets to £10, when in certain cases they may amount to over £50, are the outstanding practical features of this Report. All the rest of it deals only with administration; and those forming the Committee would be in the best position to judge whether these administrative changes were good or bad.

Features of the administrative changes are:—(1) the abolition of the Poor Persons Department, the administration and control being taken over by the Law Society and provincial law societies; which seems to be a step in the right direction; (2) that an annual grant of at least £3,000 should be made to the Law Society, no grant being made or recommended for out-of-pocket expenses of poor persons; (3) that there should be more decentralization, at Assizes and District Registries, which again is a step in the right direction; (4) that instead of a law office or bureau, some room should be obtained in some place where a clerk or librarian can interview applicants.

Although these eminent—and they are pre-eminent in their own spheres and ordinary professions—people have twice within six years considered and reported on the Poor Persons Rules, it is still only possible (apart from the new provision for a wife in matrimonial cases, and which is quite worthless if her husband is unable to provide the combined

out-of-pocket expenses of her proceedings, and of his proceedings) to give any legal aid under the Rules to a middle-class privileged sort of poor person, *i.e.*, to a poor person who is rich enough to be able to find at least £5 for out-of-pockets, but who is not so rich as to be worth more than £50 or to earn more than £2, extended in special circumstances to £100 and £4. The poorest of the poor, who are destitute and can find no out-of-pockets, and the poor who can pay part but not the whole of the costs, can still get no legal aid in High Court litigation.

It would seem to be clear, from reading the Report of the Second Rules Committee, that the case of the poorest of the poor and the case of the poor who could pay part but not the whole of the costs, had *not* even been considered by this Committee. At any rate, there is no reference at all in the Report to the tragedy happening to those two classes of poor persons, other than the suggestion that " the test as to means is to remain the same as under the present Rules, unless and until altered by Rules of Court."

In April, 1925, the Lord Chancellor and Home Secretary appointed another departmental committee, to be presided over by Mr. Justice Finlay, the terms of reference being, " to enquire what facilities exist for giving to poor persons advice with respect to their legal rights and liabilities and aid in the conduct of legal proceedings, whether civil or criminal, other than such civil proceedings in the Supreme Court as fall within the scope of the existing Poor Persons Rules, and to report what, if any, further steps should be taken in respect to these matters."

Mr. Justice Finlay's Committee.

It might be argued that, as the poorest of the poor, and those who can pay part but not the whole of the costs, do not come within the scope of the Poor Persons Rules, that the committee of Mr. Justice Finlay might also consider their position. And questions in the House of Commons were directed to the Attorney-General, suggesting that course. But he refused to consider it. So although the terms of reference may be wide enough to cover the *whole* problem of legal aid, except that arising under the Poor Persons Rules, the two before-mentioned unfortunate classes of poor people, excluded from legal aid under the Poor Persons Rules, cannot have their position even considered by the new committee.

Those in authority in England, though they have gone very near ordering an enquiry into the whole problem, are in fact again making the old historical, traditional mistake, of not considering and solving the problem as a *whole*. Is it not

probable that the new committee would feel bound to follow, when considering the condition of the poor in the County Court, what had already been decided for the poor in the High Court, and to treat that as a precedent ? On the other hand, if the Committee suggested any other method of legal aid in the County Court, then there would arise two different organizations or systems, which would not only be very uneconomical, but which must inevitably lead to disorder, overlapping, waste and confusion, reproducing the old trouble now found in unorganized legal aid.

Those in authority could avoid such a catastrophe, either by delaying action on the Report of the Second Rules Committee until Mr. Justice Finlay's Committee has reported, and then act on their own responsibility, or could extend the scope of the reference to Mr. Justice Finlay's Committee.

Compulsory legal service, or contributions, are bad in interests of poor.

There are vague hints in the reports of some of the committees that compulsory service by solicitors and barristers might solve the problem of legal aid. Forced labour never has, and never will, produce good results. There is no form of legal service worse, in the interests of the poor themselves, than forced labour. Nor is there any precedent in this country for compelling any particular class of men to do forced labour, the burden of which the rest of the community is not to share. It would seem to be contrary to public policy, and unfair, that one small class, like lawyers, should alone bear, or be asked to bear, either by way of gratuitous service, or by way of payment for such services, the whole burden of the need of the poor for legal aid. And being unfair and abnormal, there is no possibility of the legal needs of the poor being satisfied properly by such means.

Semi-official systems are possible.

In one of the Reports it was suggested that there were only two systems for affording legal aid to the poor—one official, by the State, and the other voluntary, by lawyers. But is there not also a semi-official system—such as the Scotch system, or as it is found in a most useful form in England in connection with child welfare, minor ailments or maternity aid, where official aid is given subject to the duty of reporting and inspection, but where the control and organization, subject to supervision, is in the hands of private bodies such as settlements ?

Various schemes have been brought out or suggested by individuals or organizations, since the Second Rules Committee's appointment was contemplated.

The Law Society suggested, in March, 1923, a scheme of a tentative nature, made in a Report by a special committee.

That Report is valuable, as showing the efforts, including three special appeals to solicitors, made by the Law Society to make the Poor Persons Rules properly function. If those appeals, to which were added the constant individual appeals made by the Secretary to the Poor Persons Department, failed to induce solicitors to take up voluntary work under conditions obviously unfair, how can the law societies expect to permanently get sufficient conducting solicitors on the same unfair terms? In the first wave of enthusiasm such a miracle might happen. But revival enthusiasm does not always last. The Law Society's Report is such a useful document as to facts that it is set out in the Appendix.

The great defect of the recommendations made is that the importance of bureaux or offices established in various districts for advice, and for court aid, is not apparently appreciated, nor is there any recognition of the fact that it is really impossible to adequately or satisfactorily deal with one single aspect of the problem, without considering the whole problem.

The Law Society Report on Poor Persons Procedure of March, 1923.

It will be noticed that the Law Society was, quite rightly, strongly in favour of decentralization. But if it still pins its faith to decentralization alone, as a solution of the problem, it will be grievously mistaken in the future, and disillusionized.

The Treasury Minute or Rule that public monies must not be spent on legal aid to the poor.

It is believed that there is a Treasury Minute or Rule prohibiting the expenditure of public funds in connection with legal matters, other than in connection with court buildings, or the salaries of the judges. It is, at any rate, extraordinary that on each of the last two committees appointed to consider, and report on, legal aid to the poor, a representative of the Treasury was appointed a member of each committee. That illustrates typically the attitude of mind in which the Governments of this country approach the problem of legal aid to the poor. And it is one of the great stumbling blocks to any real effective reform.

Suggestion as to legal aid in the Police Court by the Magistrates' Association.

The Magistrates' Association suggested that probation officers should be used in assisting to give legal aid in the Police Courts to poor prisoners—at least to the extent of the functions which ought to be performed by a bureau or office, which is as necessary in criminal proceedings as in civil matters. Such a remedy could only be a palliative and would not give the poor their constitutional right to equal justice. The inherent defects of the scheme were that probation officers are not lawyers, and further, are necessarily very closely associated with the police. But the Probation

Officer movement is well organized, and understands propaganda, and it has secured a substantial annual grant from the Government, in addition to the grants from the local authorities. They are only concerned with the consequences of crime, being of course a very necessary part of the administration connected with prisoners. Were there any proper system of legal aid in the criminal courts, the work of probation officers might be, to some extent, diminished.

Since it became apparent, after the Second Rules Committee had reported, that two classes of poor persons would be unable to get any legal aid in High Court litigation, two local schemes have been brought out to remedy these obvious defects in the Report.

Mr. P. Harrington Edwards' Scheme.

Mr. P. Harrington Edwards is well known as being interested in the poor, and especially in the provision of legal aid for them on an entirely altruistic basis. He is bringing out a scheme to remedy the defect whereby the poorest of the poor can get no relief under the Poor Persons Rules, and also to supply the need for legal advice and court aid in all the civil and criminal courts. He has appreciated the great importance of trying to solve the problem of legal aid to the poor as a *whole*. But his scheme is based on the legal aid being administered by one particular religious denomination—though aid will be given to poor people of all denominations—and the altruistic or charitable view is so prominently brought forward, that nothing at all must be taken for disbursements from clients. Such an organization can only be local in its operations, which must be limited by the amount of the subscriptions or donations received. It will be working on highly professional and altruistic lines, and should do much local good work. But such a scheme would be impossible on national lines without the provision of enormous funds from outside sources.

Sir George Fowler's Scheme.

Sir George Fowler, who has done much useful work in connection with the provision of legal aid to officers able to pay something towards, but not the whole of, the costs for legal work, is now endeavouring, in conjunction with The Divorce Law Reform League, to form an organization for the provision of legal aid to poor persons in matrimonial proceedings, who can pay part, but not the whole, of the costs of the proceedings, but are excluded from legal aid under the present Poor Persons Rules, because their income or their capital happens to exceed the rigid poverty test limit still retained in the Poor Persons Rules. The defects of such an organization are, that it only proposes to deal with one aspect of

the problem of law and poverty, that it will be small and local in its operations, and that it will not apparently have the great advantage of the support of the Law Society. Such an organization will no doubt do much good and useful work of a local character for the special kind of poor person for whom it is intended. All these different organizations, formed to meet particular and local problems, if they become numerous, will cost in money much more than one State or law society organization, to deal with the whole problem in all its aspects. Further, there is the danger of clashing, overlapping and waste. It is fundamentally important that one and the same organization, be it voluntary, or State, or semi-official, should control and administer the whole of the legal aid to the poor.

In one or more quarters it has been suggested that legal aid to the poor might be provided by making it an insurable benefit and tacking it on to the National Health Insurance, thus creating a sort of panel lawyer, similar to a panel doctor. Those understanding best the legal profession would view such a proposal with alarm, for it would bring into law the medical panel system, with all its defects, and not the medical hospital system, which has raised the tone and status of the medical profession, whilst the panel system has lowered that tone. Were it practicable to add still further to the burdens carried by the National Health Insurance Scheme, by grafting on to it legal benefits, it would not meet the legal difficulty, (1) because it would not enable legal aid to be given to all—including the poorest of the poor, and (2) because the medical need, being more or less constant, cannot be compared with the legal need, which apart from legal advice, would only arise on comparatively rare occasions, when it would be comparatively very expensive to meet.

Impossible to graft legal aid on to National Health Insurance.

Since the Second Rules Committee has reported, the present Lord Chancellor, Lord Cave, is reported in the Press to have said that he hoped to be able to use or extend the existing voluntary institutions (presumably Poor Man's Lawyer Meetings) for giving legal advice to the poor. As at present constituted and organized, these voluntary institutions do not in quantity, or quality, give the poor what they are constitutionally entitled to. Nor, having regard to the experiments at co-operation and organization in the past, is there the remotest chance of bringing these voluntary organizations into any general scheme, without some inducement to them to come in. Why should they give up their freedom? Each organization thinks its own particular

Impossible to use or force co-operation of voluntary organizations, without some inducement.

method best. If, as part of a national scheme, the office of conducting solicitor in civil matters could be made so attractive as to make it practicable to attach a condition to that office, that each conducting solicitor must give a certain amount of free legal advice, it would be possible to control these poor man's lawyers by turning them into conducting solicitors. Apart from that, there is no way of bringing these voluntary organizations under control, and into part of a national organization, other than by some annual payment to be made to them in consideration of their giving free legal advice and submitting to such control, in the same way that several voluntary health organizations submit to control. But it would seem to be a pity and unnecessary to pay for legal advice, apart from that given in the official bureau or office (hereinafter mentioned), where it would be necessary to employ a full-time paid lawyer. Especially in the country where there are no Poor Man's Lawyer Meetings, the problem of legal advice can be solved by inducing the conducting solicitors—whose advice is obviously better than that of other solicitors—to give such free advice. It is thought that conducting solicitors would do this under the supervision of the law societies, provided they received the whole of their out-of-pocket expenses, and when a poor person's action was successful that they also received part of the ordinary costs, the Law Society taking the other part of the costs for the general purposes of legal aid. A solution may be found in linking up the conducting and advising solicitors, as is done in the ordinary practice of a solicitor.

In short, it does not seem possible to use the existing voluntary organizations as a basis, or as the foundation, for a national system. The only way of making use of them, is to make it worth their while to come into a national organization already formed. That inducement can be given, because court fees would only be remitted to conducting solicitors acting under the rules, and if in successful cases the conducting solicitors are allowed to retain some profit costs, there would be an inducement to these organizations, and to speculative solicitors, to come into a national scheme and to submit to control. This would serve a double object —it would eliminate the worst kind of speculative solicitor, because in his cases he could get no remission of court fees, and it would bring into the national organization the majority of the Poor Man's Lawyer Meetings. If the Poor Man's Lawyer Meetings preferred to remain out, they could do so,

going on in their own way. Subject to profit costs being allowed to a conducting solicitor in the ordinary way, the law societies would really find no difficulty in arranging free legal advice—whether as to quantity or quality—being given by the conducting solicitor.

Summary of mistakes made in England as to legal aid.

Practically every person, and every organization, in England interested in legal aid to the poor is looking at it from the wrong point of view, and they do not seem to appreciate that Magna Carta is still part of the constitution, and that it enacted that justice—not charity—should be denied to none.

In particular :—

(*a*) Our various Governments, and those in authority, seem to be animated with the desire for ruthless economy in legal matters—a parsimony found nowhere else in any branch of Government organization. Their one object seems to be to shift the burden, the responsibility, and the expense, on to the shoulders of a few individuals. They have been for years hopelessly engaged in the impossible task of trying to make bricks without straw.

(*b*) The Bar, in spite of much devoted gratuitous service for the poor—has in recent years been looking at this problem from the point of view of education.

(*c*) The Law Society is most interested in organization and reporting solicitors, now turned into certificating solicitors, and has failed to realize the importance of, or to provide for, legal advice and conducting solicitors.

(*d*) The Poor Man's Lawyer Meetings, with no co-operation or organization, and which have manfully been trying to fill a breach, have failed to realize that taking the country as a whole, there is no breach, because there is no wall. Their efforts—splendid as they are—amount to really only a drop in the ocean.

CHAPTER VIII

CONCILIATION OUT OF COURT

Conciliation has great possibilities—Should be first object of legal advice to the poor—English solicitor's office provides all requisities for conciliation—Mr. R. H. Smith's book on *Justice and the Poor*—New York Legal Aid Society—Edinburgh Legal Dispensary—Great difficulties without proper clerical assistance—Memorandum as to American Conciliation, with criticism by Secretary of Association of Legal Aid Organizations in America.

CONCILIATION—comes from *conciliatum*, meaning to unite in thought or feeling those between whom there is disagreement. Arbitration, which comes midway between court proceedings and conciliation, is a proceeding out of court based on formal agreement or submission; and arbitration proceedings, though much less formal than court proceedings, do require some knowledge of procedure and law, and some lawyers have found arbitration proceedings more expensive even than legal proceedings. Conciliation out of court is a method for the settlement of disputes in such an absolutely informal way, that nothing but the good-will and consent of the parties could bring about any settlement. There is no procedure, nor any law, affecting the matter, until the parties have definitely agreed and settled what is in dispute, of their own free will, guided and influenced, no doubt, by the conciliator. Conciliation out of court is an unrecognized, home-made, method of settling disputes out of court, which comes between arbitration and ordinary simple legal advice. So far as the poor are concerned, there are immense possibilities for its future development as part of a legal aid system, where economy is one of the chief considerations.

Conciliation out of court has great possibilities for legal aid.

It has been mentioned that the dominating fundamental requisite for solving the problem of legal aid to the poor is legal advice, given by a competent lawyer. To that proposition must be added this qualification—that the object of that legal advice should be conciliation out of court. The lawyer giving advice to the poor should at all times remember, that the end he ought to have in view is to give the poor their legal remedies, and redress their wrongs, without litigation if possible. Unless that is the object sought to be obtained, the legal advice without unlimited funds to take court proceedings will lose more than half its value.

Conciliation should be the first object of legal advice to the poor.

As affecting the problem of legal aid to the poor, it is true

to say that conciliation is the dominating, fundamental, characteristic of the legal advice which should be given to the poor. Of course, if legal aid to the poor were administered by the State, with all the red tape, rigid rules, and proprieties, inherent to State operations, *ad hoc* conciliation would be impossible. Instead of conciliation out of court we should have conciliation in court, and very possibly courts especially formed for that purpose. That is the mistake which America is apparently going to make, though it has ready in its hands, already functioning, an admirable organization for conciliation out of court in its legal aid societies.

An English solicitor's office provides all requisites for conciliation out of court.

In England, an ordinary solicitor s office provides all the facilities, and all that is requisite, for conciliation out of court. By some solicitors, especially by those in the country, it is every-day practice to try and keep their clients out of court. And this is generally done by the old-fashioned type of solicitor, who has not much knowledge of law, but relies on common sense. It would be much more effective, if behind the common sense, there was such knowledge of law that those between whom conciliation was being attempted realized that in addition to what was morally right and wise, there was sound law behind the opinion expressed, which could be, and would be, enforced ; so that a person not accepting the opinion of the lawyer conciliator would feel that he was only kicking against a brick wall. If a solicitor or an organization gets a reputation for soundness in law as well as for fairness, the possibilities for conciliation out of court are incalculable, and might solve even more than three-fourths of the whole problem of legal aid.

The Right Hon. Sir W. Joynson-Hicks is reported to have mentioned, in a recent speech, that his object was to keep the poor out of the courts, and that he was going to consider whether the magistrates could give the poor legal advice. He seems to have appreciated the dominating importance of legal advice as a means to conciliation. But if his suggestion is that the advice should be given, (1) in open court, (2) at any place, by magistrates who are not lawyers, or (3) at any time except in the evening, he will find that he is making the old mistake which has throughout our history been made with regard to legal aid to the poor, in trying to give it as charity, in a way and by methods which are haphazard and casual, and do not give the poor what is their due—equality in the administration of justice. Instead of putting untrained volunteers, who, when acting in their ordinary business as magistrates, must have with them a qualified lawyer to advise them on legal matters, and whose advice—other

than in a paternal way, and for which a clergyman would be as useful—is quite useless, and would make the magistrates and the poor ridiculous, the aim should be to get the highest qualified and experienced lawyers to do this most difficult part of legal aid work for the poor. For in a sense, and as confidence is created, such a conciliator would in large measure act judicially, though there would be no immediate *ad hoc* sanction.

Mr. R. H. Smith's great book on *Justice and the Poor*.

Mr. R. H. Smith in some measure appreciated conciliation out of court, though his great work, *Justice and the Poor*, has very little to say about it. But he does write :—" Litigation should always be the last resort in legal aid work. . . . The legal aid societies, whose offices in America are just like any ordinary private law office (*i.e.*, a solicitor's office in England) have earned such a reputation for fair dealing that the opposing party is often willing to come and relate his story. The legal aid lawyer changes his attitude from that of advocate to that of arbitrator. Force of circumstances makes his decision binding, because neither party, if poor, can afford to fight . . . the nett result in America of legal aid work is to decrease rather than increase litigation." This book is the greatest and most useful work ever written on the subject of legal aid to the poor. But the greater part of the book is taken up with court difficulties, statistics of legal aid societies, and other matters peculiar to the United States. And the number of States, having different laws and systems, and the multitude of courts, varying in the different States, make the book a little difficult to an Englishman. It is to be hoped that he will later on bring out a second volume, devoted to conciliation out of court and the work of a poor man's lawyer.

The problem, in England at any rate, is not to create more courts, or systems, but to give the poor justice in the existing courts, which on the whole meet the needs of the English people. Many people advocate that we should have a Small Claims Court in this country. The County Courts are capable, qualified, and, in fact, do deal with small claims in this country. If necessary, by extending the jurisdiction of the County Court Registrar, subject to appeal to the judge, he could deal with small claims quite as efficiently as the American Small Claims Court. One learns much more about American methods of conciliation out of court from the publications of the legal aid societies.

The New York Legal Aid Society.

An American Legal Aid Society has the same organization as a solicitor's office in England. Its method of working is described in the *History of the Legal Aid Society of New York* :—

"After a case has been taken, a letter is sent out to the defendant requesting an explanation or any information which may help to arrive at an understanding of the difficulty. Usually the defendant either writes, calls, or telephones, and the facts are gone over. In some cases numerous letters or interviews are necessary. It is the policy of the Legal Aid Society to effect an amicable settlement, if possible. . . . As a matter of fact, only a very small proportion of the entire number of complaints become the subject of litigation. In many cases an investigator is sent out by the Society to interview parties or witnesses, and to obtain information as to character or facts, to guard against imposition or misstatements."

It has been stated by some of those in authority in England, that conciliation would not affect divorce or matrimonial cases in this country. That does not agree with the experience of those few poor man's lawyers who have attempted such conciliation in the early stages of matrimonial difficulties. Nor does it agree with the experience of the American legal aid societies. In the year 1911, 90 per cent. of the cases that came to the New York Legal Aid Society were satisfactorily dealt with, without any litigation—the total number of cases being 33,000. Out of this total number, over 3,000 were cases of poor persons requiring advice or assistance relating to divorce or matrimonial matters. The percentage of these cases satisfactorily settled without litigation was still higher. The Report claims that 95 per cent. of the matrimonial cases were satisfactorily "adjusted by common sense, without litigation."

Amongst other methods used by some of the American legal aid societies in matrimonial matters, in order to effect a settlement out of court are :—to remind both parties that there are often faults on both sides ; to remind the man that litigation is uncertain in its results ; and to remind the woman that she should consider the welfare of her children and her own reputation ; finally, it is suggested that they should try and make a new start. The methods used of course vary, just as the legal aid societies—though most of them have followed the organization and procedure of the New York Legal Aid Society—vary considerably in their procedure and organization, as to details.

In England there is no organization which attempts conciliation in the same way as the American legal aid societies. In fact, conciliation, as part of legal aid work, in England is practically unknown.

In Scotland there is an excellent organization which does

use, and understand, conciliation out of court, in administering legal aid to the poor. The Secretary and Treasurer of the Edinburgh Legal Dispensary writes :—" The lawyers in attendance at the Dispensary do everything possible to effect amicable settlements by correspondence and meetings, and it is only when legal proceedings require to be taken that the cases are remitted to the officially appointed agents for the poor. . . . Letters are written on behalf of the applicants when necessary, and if the person written to calls at the Dispensary he is seen in ordinary course, and if both parties happen to be present, they are first of all interviewed separately, and if thought advisable, they are thereafter seen together."

The Edinburgh Legal Dispensary.

Compare the Scotch and American practice, as regards conciliation, with English practice at Poor Man's Lawyer Meetings. At Cambridge House no letters are written because of Bar etiquette. At Toynbee Hall no letters are, or were, written, but in a very few selected cases which show a very promising cause of action, a committee may refer the case to a practising solicitor, who, of course, would adopt the usual methods of a solicitor in private litigious practice, and write one preliminary letter before action brought. At a Law Society Poor Man's Lawyer Meeting (*e.g.*, The Sussex Law Society, which was only established last year, and is doing good work) they dissociate the work of advice from the work of correspondence, and transfer the correspondence to a solicitor willing to undertake litigation, and " the assistance given in ordinary circumstances is to be limited to advice, and in proper cases to the writing of *one* letter." That is the typical English professional attitude to legal aid by poor man's lawyers.

A poor man's lawyer who has travelled a great deal in foreign countries, making some study of their conditions, was very much struck with the fact that our country, in spite of the notorious purity of its legal administration, and in spite of all the charity, so generously given by the legal profession in their individual capacity in individual cases, was really behind almost every other nation with regard to organized legal aid to the poor. And he tried to make a study of the problem in this country as to all the different aspects of the problem. He too, like the Home Secretary, came to the conclusion that the absence of conciliation out of court was the root defect and trouble with regard to England. That conclusion has been tested in many ways, not only by a study of the courts and Poor Man's Lawyer

Meetings, but by, when possible, following up as a spectator into the courts cases where advice had been given.

Nearly all poor man's lawyers work under great difficulties and without any clerical help. It is impossible to get time to copy out all the letters that ought to be written. So one poor man's lawyer would generally write out a letter, and give it to the poor person to copy, with strict instructions to post the original letter, and bring back the copy for the poor man's lawyer to see. On only two or three occasions was a letter copied accurately. Very often indeed the poor person tries to improve it, and spoils the sense. Very often the poor person cannot read, and has to get some friend to make the copy. On one occason the poor person posted both the original and the copy to the other side.

The great difficulties in the way of conciliation without proper clerical assistance.

The letter itself quite openly states the facts and the legal remedy. If an action has been started or threatened, as often as possible, facts are stated by the poor man's lawyer which would give rise to a right to counter-claim, or some notice is given, the object being to make the other side hesitate and think. For example, in rent cases a landlord never likes receiving the written request under sec. 11 of the Rent Act, 1920. Such request brings him into a frame of mind open to conciliation. In husband and wife cases, especially in the early stages, a letter pointing out the law, and suggesting that there may be faults on both sides, almost always causes the other party to call, very often bringing witnesses. Once when a letter was written about a ferocious dog, requesting that it should be kept under control, the other side, without being asked to do so, called on the poor man's lawyer with the dog, in order to prove that it was as meek as a lamb. Slander cases, and gross abuse, especially between married women living in the same house under the present congested housing conditions, can often be settled, if both parties come before a poor man's lawyer. Once a poor man's lawyer, sitting at one of the university settlements, was consulted by one of such married women, who had been to the Poor Persons' Department, and, so she said, was advised she had a good case, and was given the forms for starting a High Court action for slander. And she had brought the forms to the settlement for the poor man's lawyer to fill up for her. But she had no case—there was no special damage—and she did not come within the exceptions to the general rule. So she was told to take the forms back to the Poor Persons' Department. Then she asked the poor man's lawyer to write a threatening letter to the person

causing the annoyance: and he wrote a short letter intimating that without going into questions of law or litigation, it seemed a pity that neighbours could not learn to dwell together in amity. The next week she turned up again at the meeting, and said that she and her opponent had made it up and were friends.

Sometimes it happens that conciliation is brought about by one letter from a solicitor, stating what the law is. Many of the poor have quite an exaggerated idea as to the status, powers, and influence of a solicitor. Some of them even seem to think he has some sort of judicial authority, and this is especially so where there is a large Irish population who cannot read or write.

To check the American methods of conciliation—and the trouble about making a study of foreign systems or practice is that they are so constantly changing—a poor man's lawyer sent, in 1925, to the Secretary of the National Association of Legal Aid Organizations in America (a body very recently formed with the object of federating the American legal aid societies), a memorandum of what he considered their methods were, asking him to criticize, and point out if and when there were any inaccuracies. A copy of this memorandum is set out below, the American criticism being included in brackets.

Memorandum as to American Conciliation, with criticism by Secretary to the Association of Legal Aid Organizations in America.

Memorandum as to American Methods of Conciliation outside the Courts, and without any Court Intervention.

Note.—In my view the dominating decisive factor with regard to legal aid to the poor is legal advice, which should be given at times and in places convenient to the poor. That advice is needed by the poor as the *first step*. The object should be to keep the poor out of the courts, whilst giving them their legal rights.

As I understand it the American legal aid societies—notably the New York Legal Aid Society—have developed the legal advice idea into a method of settling disputes by conciliation without any litigation. As I understand it—and I am writing without reference to books or notes—the method is as follows:—

(1) Advice is not, as in England, free. Clients pay what they can. Clients are not refused aid because they can pay nothing. There is no *rigid* poverty test limit. The test shortly is to render legal aid to those who cannot procure it elsewhere.

[The situation in the United States about charging

fees varies with the organizations. The older and more established organizations do make charges, while a great many of the newer organizations do not make any charge at all. . . . The charge is of a three-fold nature. In some cities the charge is merely a registration fee of 25 c. or 50 c., or perhaps $1, which is made to cover costs of postage and telephone calls in cases where the client seems to be able to afford this charge. In some cases a percentage, say, 5 per cent., is charged on all collections of money made for clients, in excess of a certain amount, usually $5.00. This also is not a rigid rule, and is waived according to the discretion of the attorney in charge of the office. In a third case, for certain types of cases special charges are made where specially difficult and complicated work must be done, provided the client seems to be able to afford it. It is important to remember that charges, even in organizations where they are made, occur in probably not more than one-third of the cases coming for attention . . . Frankly, I believe that the rigid poverty test is likely to work injustice ; on the other hand, it is unfair to expect solicitors to volunteer if they are not to receive whatever out-of-pocket expenses are incurred inside their offices. It is all very well to say that the legal profession is only incidentally interested in fees, but everyone would admit that the lawyer would rapidly find himself in the poor litigant's class unless some provision is made to take care of incidentals of this sort. The question of drawing the poverty test limit is one which each of our organizations has resolved in its own way. Substantially, we have felt that the drawing of this limit was a question in which the local Bar association should be consulted, because if we exceed our jurisdiction we naturally infringe upon those cases where the members of the Bar ought to secure a fee. We have asked the American Bar Association to lay down for us a reasonable rule which can be applied. . . . The practical method of handling the situation is to secure an able lawyer in charge of the work and to have him refer all doubtful cases to a committee of the Bar Association.]

(2) In civil matters, clients straightway see a trained lawyer, and are advised :—

(*a*) that they have no case ;

or (*b*) that it is inexpedient to prosecute any case ;

or (*c*) that they have a good cause of action ;
or (*d*) that *ex parte* or *prima facie* they have a good cause of action.

As to (*a*) and (*b*)—and they cover a large proportion of cases—the matter is at an end.

As to (*c*) and (*d*) the Legal Aid Society takes the matter up, as a solicitor does in England : but with this difference—that the object is to avoid, if possible, litigation. The first step taken by the Society is to write a letter to the other party or his lawyer, *openly* setting out the facts and case, and suggesting a conference. If the other party has no lawyer, the Society very often sees both sides at the same time, and forms a definite conclusion as to the merits of the case, and so informs both parties. If one of the parties will not accept such conclusion the Society acts, if so requested, for whichever party accepts the conclusion and undertakes any necessary litigation for a party, if a poor person. (According to English ideas, there is the objection to this course that the party not accepting would have given away his case to the Society.) If, on the other hand, the other party will not attend or discuss the matter, the Society acts for the client in the ordinary way in prosecuting legal proceedings.

(3) The lawyers of the Society become experts at conciliation.
(4) The very efficient way in which the lawyers of the Society do their work, and the fact that they do not fight doubtful cases, leads to a settlement in most cases, even after litigation has started.
(5) The lawyers are full-time paid officials of the Society.

As an illustration of the extraordinary success of these methods, the following is given :—

In 1911 over 3,000 persons applied to the New York Legal Aid Society for help in matrimonial matters : of these matters over 90 per cent. were settled without any litigation, by common sense or conciliation. Dated 15th February, 1925.

Conciliation by the Boston (U.S.A.) Legal Aid Society.

The General Counsel of the Boston Legal Aid Society writes in December, 1924:—" I have no statistics available to throw a great deal of light on your question in regard to how many cases are settled by conciliation. . . . During 1922–3 we handled a total of 12,790 cases. 1141 of these cases actually went to court, although a great proportion of them were *ex parte* matters, such as guardianship and so

forth ; 1659 of the total number of cases handled would have gone to court had we not been able to settle them successfully before they reached the court stage."

It is extraordinary that in England those in authority seem to have set their faces against conciliation out of court.

Those in Authority in England do not understand, and have set their faces against, conciliation.

(1) The Poor Persons Rules expressly provide that no poor person admitted to take proceedings as a poor person, nor any solicitor or counsel acting for him, may discontinue, settle, or compromise, such proceedings, without the leave of the court or a judge.

(2) The solicitor or counsel who advises in the first instance, is precluded from acting in the court proceedings.

(3) The Poor Persons' Department has no right to give legal advice or to attempt conciliation.

(4) The Report of the Poor Persons Rules Committee does not suggest that the reporting and certificating solicitor should attempt conciliation, or even give legal advice.

(5) The Report of the Poor Persons Rules Committee makes no reference at all to conciliation. It does not seem to have been even considered.

Is it not clear that conciliation out of court is not understood or practised in this country? In the interest of economy, it is the most important factor connected with legal aid to the poor.

A judge or counsel who has not been through a solicitor's office instinctively suspects and distrusts conciliation. Etiquette has a tendency to make law a thing apart, an end unto itself, forgetting that only as it aids human beings has it any justification. How can real objection be made to anything which satisfies both parties, saves them and the State expense, and tends to heal misunderstanding, by the act and will of the parties?

Abraham Lincoln gave this advice :—" Discourage litigation. Persuade your neighbours to compromise whenever you can. Point out to them how the nominal winner is often the real loser—in fees, expenses, and waste of time. As a peacemaker the lawyer has a superior opportunity of being a good man."

The idea of conciliation out of court is not new. It is almost as old as the hills. It is only in modern times that in England it has become suspect, in the view of the Bench and Bar.

CHAPTER IX

THE PUBLIC DEFENDER IN THE CRIMINAL COURTS

Defensor of Edinburgh Legal Dispensary—Public Defender in United States of America—Memorandum sent to Secretary of Association of Legal Aid Organizations (U.S.A.), with his criticism—Statement by General Counsel of Boston Legal Aid Society—In England solution lies through bureaux or offices for general legal aid work.

In England we have a Public Prosecutor, but no Public Defender. In Scotland the Edinburgh Legal Dispensary was so affected by the plight of undefended poor prisoners in the Police Court that they decided to employ a lawyer to act as "Defensor" in that Court. His services have been so useful, that the Edinburgh Town Council gives him annually £30 towards his expenses. His duties are thus explained by the Secretary and Treasurer of the Legal Dispensary :—

Scotch Defensor of the Edinburgh Legal Dispensary.

(*a*) The Defensor calls at the police office every morning to see whether his services are required. He is told by the officials if there are any cases in which they think he should appear on behalf of the accused.

(*b*) He appears for poor persons, however trivial the offence may be.

(*c*) A defensor is not needed in Scotland except in the Police Courts, for every prisoner in the High Court and Sheriff Court is entitled to the services of a Poors Agent, if he desires it.

The Public Defender in the United States of America.

In America the public defender idea has made great progress. "The essential underlying ideas as to the defender in criminal cases are two :—First, that the official or attorney responsible for the defence of poor persons should be paid for his services and his expenses defrayed ; second, that instead of having counsel changing from case to case, all the work should be centralized in the hands of one official or organization. . . . As centralization of work makes for economy, efficiency, and responsibility, let there be, instead of a shifting group of attorneys, one definite official or organization charged with the duty of defending the poor in criminal matters. . . . It is probably not inaccurate to estimate that to secure adequate representation for poor

prisoners by paying ordinary counsel is twice as expensive as by the defender plan (*i.e.*, of having an expert). . . ."[1]

In America in 1917 there were forty-one organizations doing public defender, civil and criminal work, and there were also four offices doing only defender's work.

In June, 1923, the National Association of Legal Aid Organizations held their first annual meeting, at which there was considerable discussion about the Public Defender, and at which Mr. Bradway, Secretary of the Association, is reported to have said :—

" In Connecticut they have a state-wide Public Defender organization by which they have a public defender or an individual member of the bar in each county to look after the poor and needy criminals who need legal assistance. The theory of the thing seems to be this. If we assume as a preliminary matter that a poor man is entitled to be represented by a lawyer in court we must also assume that his need of a lawyer is as great in the criminal matter as it is in the civil matter. If there is an obligation on you and me to provide a lawyer for him in the civil matter it is also an obligation to provide a lawyer in the criminal matter.

" The only organization that I have had an opportunity to study in Connecticut is the one located in the City of Hartford, in which Mr. John F. Forward is counsel. He handles his cases somewhat along these lines : They have four terms of court in Hartford and we will assume that a term of court begins about the first day of June. About the first of May Mr. Forward will communicate with the sheriff's office and get from them a list of the prisoners who may wish him to represent them. He will then go down to the jail and take with him a pad of paper about the size of this note book. He will interview each prisoner who asks for assistance and get his life history and he will place that on his paper and go back to his office and think the matter over. After he has thought the matter over and conferred again with the person he will advise certain of his clients to plead guilty and have it over with. In most instances where they are opposed to pleading guilty, or where they have a reasonably good case, he will take a second step, and that is have a heart-to-heart talk with the prosecuting attorney, lay his cards on the table and say, ' Now, my information leads me to believe thus, and so, what have you got on the subject—can't we get together on the matter,' and such is the regard that the two representatives of the law have for

[1] R. H. Smith, *Justice and the Poor.*

each other that they get along splendidly under the arrangement. Some cases are of such nature that they cannot agree on the facts, and when they arrive at a situation like that the only thing is for both parties to go at it and have a fight to the finish. By the time the first of June has arrived he is in possession of three groups of cases; first, where they will plead guilty right away; and, secondly, the group of cases in which the prosecuting attorney is willing to agree upon some leniency; and, thirdly, the group of cases which must be fought out, which, of course, are comparatively few in number. He then goes into court with this last group, fights to the finish and frequently is beaten, which shows that they have a remarkably good prosecuting attorney in the city.

"Mr. Forward told me that if a man does not accept his advice in the first instance, and pleads guilty upon the advice given, he would go ahead and try the case, and he was perfectly frank in talking about the situation with the attorney, because he thought it was best to have a man stand on his own feet in cases of that sort.

"Mr. Forward also tells me that a certain number of cases each term are those of prisoners who apply to him for aid and in the course of a month find that their friends will come in and supply them with an attorney, and he then relinquishes the case in favour of the outside attorney. There is a further matter that might be brought to the attention of this meeting, and that is whether that service should be extended to the police courts or whether to restrict it to the regular trial courts. In Los Angeles they have a police court Defender and also a Defender in their regular trial courts, and Mr. Pope, the police court defender, writes me that it is an excellent idea and he would not like to have any discussion of the public defender work take place without having his idea presented. He seems to think that if you have a Public Defender in your police court *it weeds out a great many cases*. Mr. Forward stated that on the other hand there was a provision whereby the mayor of Hartford could appoint such representative in police court, but it wasn't satisfactory because the Defender would be compelled to go around to every part of the county to represent different people and there did not seem to be sufficient funds to take care of it. I want to emphasize the state-wide character of the plan. It seems to me that we should regard this type of service not merely from the point of view of affecting a particular city, but we should try to make it state-wide in

order that it will fit into the machinery that we have in our regular system of administering justice."

An English poor man's lawyer, in 1925, sent to the Secretary of the United States Association of Legal Aid Organizations a note of what he understood were the American Public Defender's methods, asking him to criticize and point out any inaccuracy. The following is a copy of such parts of the memorandum as relate to the Public Defender, the American criticism being included in brackets :—

Memorandum as to the American Public Defender

Memorandums to the Secretary of the Association of Legal Aid Organizations (U.S.A.) for criticism, together with the criticism.

(6) In criminal matters in *all* the courts of the district employing a Public Defender, any person, no matter how small the complaint, receives the help of the Public Defender, *free* if he can pay nothing. But if he can pay something, then paying as much as he can afford towards the expenses.

[Under your Section 6 (which he sets out) our Public Defender organization has not been as widely extended as this statement implies. It is on a state-wide basis in California and Connecticut. There are also Public Defenders in Omaha, Nebr., Minneapolis, Minn., Chicago, Ill., Norfolk, Va., Memphis, Tenn., New York City and Los Angeles and San Francisco, Cal. In the other States in the United States, and in the other cities, the procedure of assigning counsel (so severely commented on in Mr. R. H. Smith s book, *Justice and the Poor*) to represent the poor defendant is still the customary one. The situation is not satisfactory to any great extent and we are engaged in endeavouring to extend the criminal side of legal aid work, whether it be done by an officially equipped Public Defender, or by a representative of the Legal Aid Society. This is naturally a slow process and while we aim at the condition indicated in your memorandum, we have not reached that point yet. So far the Defender idea operates in the Magistrates' Courts only in Los Angeles, Cal., and Cleveland, O., as far as I have been able to learn.]

(7) Even when a man is summoned for such a trivial offence as drunkenness, if he is poor he is entitled to the services of a Public Defender.

Note.—This goes very much further than the long and elaborate resolutions passed by the International Law

Association in 1903, but it would seem to agree with a resolution of the General Council of the English Bar passed between 1899 and 1903—I think 1903—" That it is in the interest of *all* prisoners, considering their interests alone, that they should be represented by counsel." I am not at all clear (and I was asked to consider the point carefully) how far America goes in granting to all prisoners and accused persons legal aid. In Mr. Broadway's letter of the 3rd January, 1925, he writes: " There is very little other than a poverty test." Dated 15th February, 1925.

[The question of a poverty test in criminal matters is usually made by the court. The judge gathers such information as he desires to convince him that the case needs to be defended by counsel, and that the defendant cannot afford it. Personally I am opposed to the idea of a hard-and-fast rule in the matter of poverty. A young man in good health, earning $25.00 a week, may afford to pay a lawyer for legal services, whether civil or criminal. A widow woman with a large family of minor children dependent upon her for sole support, receiving an income of $25.00 a week, might be in dire need of legal assistance, and yet could not afford it.]

Statement by the General Counsel of the Boston Legal Aid Society.

The General Council of the Boston Legal Aid Society writes, in December, 1924: " It is very difficult to answer your questions. . . . I strongly believe that we should have a Public Defender as they have now in many cities. . . . The test whether or not a criminal case should be taken up in New York is a simple one. They take only those cases where the defendant has not been admitted to bail. Anyone who has been admitted to bail is supposed to be able to also employ an attorney. This may be untrue."

In the United States of America, and in Scotland, the " defender " actually goes into court and acts as advocate there for the prisoner. That is, in both cases in the Police Courts, the defender acts in the same way as an English solicitor would act for an ordinary client, the only difference being that an ordinary English solicitor is not supposed to tout for work. But the defenders in America and Scotland have, in addition to the ordinary legal work, to get into touch with and find out what prisoners need defending. Recently the Magistrates' Association suggested—probably as a temporary makeshift expedient—that probation officers, who are excellent people, concerned with the consequences of, not the causes for, crime, should inspect the lists of prisoners,

and then instruct some solicitor chosen from a band of voluntary, unselected, unpaid, solicitors. Probation officers have no legal training and could not appreciate the legal necessities of any prisoner; moreover, they are closely associated with the police. So far as lawyers are concerned, all panels in England of voluntary, unselected, unpaid, lawyers, except for the purpose of education and advertisement, have been a dismal failure from the point of view of the poor.

The public prosecutor in England does not actually personally conduct cases in court. If the question of economy were not at the present time supreme as a matter of policy for England, it might be that a Public Defender should be established in England on the same lines as those of the Public Prosecutor. But having regard to the question of economy, and even more so to the great importance of having one and the same organization for the whole of the legal aid to the poor, whether advice, or civil or criminal court aid, it is thought that it would be inexpedient to appoint in England Public Defenders for poor persons.

In England the solution may be found through the bureaux or offices for general legal aid.

The solution of the problem of legal aid to poor prisoners in England, probably lies in the direction of giving to the bureaux or officers hereafter referred to, distributed throughout the country, for the purpose of advice and civil court aid, the same powers—enlarged where necessary—as to the defences of poor prisoners, as the Public Prosecutor in England has as to prosecutions, with the right, as he has, to employ when necessary outside counsel and solicitors. A bureau or office seems to be necessary to solve the problem of legal advice and civil court aid. If it is organized like an ordinary English solicitor's office it should be able, without much additional expense to, in fact, act as a Public Defender in England.

In England the scale of fees allowed under the Poor Prisoners Defence Act, 1903, has not been large enough to attract the best lawyers. That matter should be very carefully considered by those in authority.

General and Mrs. Bramwell Booth consider the proper, adequate, defence of poor prisoners, in all the criminal courts in England, to be the most pressing part of the problem of legal aid to the poor.

CHAPTER X

LEGAL AID TO THE POOR IN FOREIGN COUNTRIES

Difficulties to foreigner attempting study of other countries—Scotch system of legal aid—United States system—Legal aid movement in Sweden—Report of League of Nations, August, 1924—Benefits given in foreign countries, but not in England.

The difficulties to a foreigner of making a study of other countries.

It is very difficult indeed for a foreigner to write anything reliable about the position as to legal aid to the poor in other countries. Quite apart from the inevitable difficulties as to language, unless English or French happen to be spoken in the particular country, there are also still greater difficulties arising from the fact that the laws, and practice and method of giving legal aid are constantly changing, and being modified, always so far as can be discovered in the direction of increasing the assistance given to the poor, except in England, where (apart from the Poor Prisoners Defence Act, 1903) the position has been steadily getting worse, since the repeal of 11 Henry VII., Cap. 12. The legal position of poor persons in all countries, except perhaps in Scotland and in Sweden, seems in recent times to be in a constant state of ebb and flow, and more or less, except in Scotland and Sweden, the various countries seem to be experimenting. But they are experimenting in the right direction—with the exception of England, who has not yet learnt the elementary lessons connected with this problem, and whose point of view is wrong. Unfortunately the books, reviews, and articles, which we can read in this country with regard to legal aid in foreign countries, are not absolutely reliable.

The position may have entirely changed since the book, or article, was written. Moreover, it is difficult for a foreigner to really understand the true position in other countries, even if he visits such countries, and stays there some considerable time. He can only get a very general and superficial idea of the working of a foreign legal system. Almost everyone connected with the working of any legal aid system will, as is proper, be filled with enthusiasm for his own system, and particularly for his own branch of it; and if his system is voluntary, it will differ from all other systems, and

the person running it will genuinely think his own particular brand of the voluntary system is the best. If the foreigner wishes to see a Poor Man's Lawyer Meeting, he is welcomed, not to quite the ordinary meeting, but to a specially warned and prepared meeting—in fact, it will be a sort of state visit. If the foreigner is a really important person (such as a special correspondent, in the old days) he may even be invited to attend one of the courts, and to see and hear how well the poor are there treated. Quite possibly on that occasion some very eminent leader of the Bar may appear gratuitously as counsel for a poor person; and quite probably, in such an eventuality, the judge of the court will call public attention to the fact, that this eminent lawyer, not as a *rara avis*, but in the ordinary course of things, is representing the poor.

The foreigner will probably see the leading legal authorities of each country, who quite naturally and properly only call attention to the good points in their systems, omitting or skilfully gliding over the weak points. Could they be expected to do anything else, or to give their own country away? And the result is that such person, unless he is naturally very critical, leaves with the impression that the foreign country has better laws and systems than his own. There is danger also in getting lost in a bog of trivial detail.

What is written here is based on a study made in foreign countries before 1914, and on whatever books could recently be read in this country, or got from foreign countries. It is not in any way suggested that the statements as to the foreign position are very reliable. On the contrary it is instinctively felt that there must be several inaccuracies, for the reasons before given.

If those in authority in England are influenced, or guided, by the foreign position—and it does not follow, of course, that what is suitable in a foreign country is necessarily suitable in this country, though it should be useful as a guide, or for comparison—then it is desirable that the Government or League of Nations should, by a specific date, find out what is the exact system then in operation in each civilized country. But unless foreigners are requested to direct their minds to particular points, such as, (1) whether or not there is a rigid poverty test limit, (2) whether a successful poor person recovers costs in the ordinary way, (3) whether counsel and solicitors are paid, (4) whether there is an organized system for giving free legal advice, etc., the replies received will be of little value.

The Scotch System of Legal Aid to the Poor.

Set out in the Appendix is a memorandum prepared by the Solicitor-General for Scotland, which appears in the Minutes of Evidence taken before the Select Committee on the Poor Prisoners Defence Bill, giving the position of the poor in the criminal courts in Scotland. That memorandum does not touch some of the most important considerations affecting England at the present time. Legal aid to the poor is, in Scotland, of very ancient origin. In the Scotch courts this privilege rests upon statutory authority, originating in the Act of 1424, C. 45.

In place of a large number of agents undertaking to conduct two or three cases each year for poor persons as in England, in Scotland since 1819, in the Court of Session or Supreme Court, six advocates or barristers, four writers to the Signet, and four solicitors in the Supreme Courts are annually appointed by their respective bodies to conduct cases for persons admitted to the benefit of the Poor's Roll. Two W.S.'s and two S.S.C.'s are appointed for civil causes and two W.S.'s and two S.S.C.'s for criminal causes. In the Sheriff Court a number of agents, varying according to circumstances, are appointed in each Sheriff (or County) Court. In Edinburgh, four agents or more are annually appointed by the Society of Procurators practising in the Court. The regulations regarding the Poor's Roll in the Court of Session are now contained in the Codifying Act of Sederunt of 4th June, 1913. Before a poor person is admitted to the benefit of the Poor's Roll his case is considered by the reporters on *Probabilis Causa* and the applicant must produce a certificate signed by a parish minister and two elders setting forth his circumstances.

A party litigating *in forma pauperis* makes no payment into Court in Scotland, and the agent conducting his case is only entitled to payment of his actual outlays. He usually charges the client a small sum to cover postages, and, while not authorized to do so, he frequently charges a very modified fee in addition. It has been held that an agent cannot recover fees from a client on the Poor's Roll *unless the client has been successful* in his action and is, on that account, able to pay them. A party litigating *in forma pauperis* is exempt from payment of the fees of court, but where he is found entitled to expenses, the ordinary fees of Court, including all dues of extract, must be charged in his account as if he were not on the Poor's Roll, and duly paid. In consistorial causes, the court may, on cause shown, remit all or part of the fees paid by both or either of the parties.

The regulations regarding admission to the Poor's Roll in the Sheriff Court are now contained in the Sheriff Court (Scotland) Act, 1907, as modified by the 1913 Act. Under these Rules, agents are appointed as above mentioned, and the certificate of poverty should be granted by the Inspector of Poor. In dealing with the question of expenses in the Sheriff Court, the Rules provide that a party litigating on the Poor's Roll is not liable in payment of any of the dues of court or fees to his agent or the Sheriff Officer except actual outlays, unless expenses be awarded and recovered. Where unsuccessful, he may be found liable in expenses like other litigants. The Rules provide that a poor's agent is not liable for the expenses of witnesses or the charges or allowances of sheriff clerks, shorthand writers, sheriff officers or Bar officers, unless he personally recover these from the opposite party.

Scotch common sense.

There is *no definite limit of income* for a person obtaining the benefit of the Poor's Roll. The amount depends on *circumstances.*

In Scotland, therefore, as to all the civil courts—including the court which is equivalent to the English County Court, the agents for the poor are entitled to, (1) charge their actual outlays, and (2) in the event of success are entitled to recover their costs from the other side. An eminent Scotch lawyer, when told that a suggestion had been made that English lawyers acting for successful poor persons should receive liberal and full out-of-pockets, but that the profit costs should be received by an institution for legal aid generally, made this written comment :—" I agree with you that this rule (*i.e.*, that a successful pauper should be treated as an ordinary successful litigant) should be restored in England, but there are comparatively few lawyers in Scotland, who could *afford* to allow all such fees received for work done by them to be paid into the funds of an institution." In criminal cases in Scotland there are no reporters.

The great defects of the Scotch system of legal aid to the poor would seem to be :—

(1) There is no organized system for giving legal advice to the poor ; and apart from the Edinburgh Legal Dispensary, and one other voluntary organization in Glasgow, there are not many Poor Man's Lawyer Meetings, nor regularly organized places where the poor can get advice, though no doubt individual

Scotch lawyers in individual cases do give the poor a great deal of gratuitous legal advice.

(2) In criminal matters there is no method or procedure whereby a poor prisoner can be defended in the Police Courts, apart from the voluntary efforts in one locality by the "Defensor" of the Edinburgh Legal Dispensary.

(3) Advocates and lawyers representing the poor in criminal matters are not paid; the result is that unless a young counsel requests an older counsel *who is present in court*, to assist him in conducting the defence, the defence falls on young lawyers of less than three years' standing. This work is very good for their education.

(4) In criminal matters in Scotland no proper provision seems to have been made for payment of a poor prisoner's expenses of his defence or for witness fees.

Subject to these reservations, Scotch methods do seem to be very good, particularly as to details. They show the usual Scotch common sense and straightforwardness, unencumbered by etiquette, and not obscured with charitable, visionary, impracticable, ideals. Scotch lawyers of all kinds seem to be remarkably satisfied with their system of legal aid to the poor, for in criminal matters it gives training and experience to young lawyers, and in civil matters, when the poor person is successful, he is not treated differently to any other litigant as in England, and the lawyers, like those acting for any other class of litigant, can recover and be paid ordinary and proper costs. Some day, however, the pressure of outside bodies interested in the poor, will force Scotch lawyers to make adequate organized provision for legal advice, for the defence of poor prisoners in the Police Courts, and for the defence of all prisoners in all courts by experienced counsel.

The position of legal aid to the poor in the United States of America is so admirably and exhaustively set out in *Justice and the Poor*, a book brought out by the Carnegie Foundation for the Advancement of Teaching, and written by Reginald Heber Smith, that it is not necessary to make much further reference to the position of poor persons in America with regard to legal matters.

The point of view, the test, or idea, behind that book, extending to over 250 pages, was whether or not the administration of justice was equal for all classes of the community: and if not, what was the remedy. No other point of view

or test can permanently solve the problem of legal aid to the poor. One may perhaps be permitted to make this comment:—America seems to be wasting time, and adding to the existing present confusion through the multiplicity of courts, by adding still further courts—probably very good in themselves—to deal with the problem of the poor and litigation. It does not seem clear that the deeply learned author of that book fully appreciated the importance of *conciliation out of court*, or that legal advice was even more necessary to the poor than court aid.

The United States system of Legal Aid to the poor.

Quite apart from the special American courts, such as The Small Claims Court, Conciliation Court, Domestic Relations Court, etc., that country does have two existing and outstanding organizations, formed on the right lines, in "The Legal Aid Societies," and "The Defender in Criminal Proceedings." It is probable that the organization and method of working of the "New York Legal Aid Society" are as near perfection as possible, for establishing the bureau or office, which is absolutely necessary for any proper system of legal aid to the poor. It is probable also that the method of working, and the organization, of the Public Defender, and more especially so if he is associated, or connected, with a Legal Aid Society, are also as near perfection as they can be, for the defence of poor prisoners in criminal cases. But the Public Defender is not in so strong a position as the Legal Aid Society. He is of more recent origin. The jurisdiction, constitution, and methods, of work vary greatly in different localities. Statistics and facts with regard to that office are not yet generally known.

No General remission of court fees for poor persons in America or in England.

One great defect of the American system is that there is not, as there is in Scotland, any general remission of court fees in the case of persons too poor to pay any fees. It is understood that that matter is now being considered. Possibly some law affecting the whole of the United States of America and all its courts, and also a law affecting England and all its courts, will in the future be passed in each of those countries, whereby any person to whom it is really impossible, because of poverty, to pay court fees, will have such fees without question remitted, until the poor person if, and when, successful in the litigation can repay such remitted fees, as is done in Scotland.

History of the Legal Aid movement in Sweden.

The history of legal aid to the poor in Sweden is interesting, in connection with the advantages or disadvantages of whole or part-time lawyers, and paid or unpaid lawyers. The first Legal Aid Society of Sweden was formed in Gothenburg in

1872 by the local authority. An attorney was put in on *part* time to conduct the legal aid work, with permission to continue his own private practice. This proved very unsatisfactory, because he was much more interested in his own business than in that of the Legal Aid Society. In 1884 the Stockholm organization was formed on the same lines. In 1905 there was reorganization, and several societies united to form a new Legal Aid Society, and lawyers from the Swedish Law School were to give *gratuitous* service to the organization. This was not at all satisfactory, and after a trial of sufficient length the organization was dissolved.

In 1913 the municipality formed a Legal Aid Society and engaged an attorney for *full time*. This worked better and was a step in the right direction. In 1919 the Government of Sweden realized that *legal aid to the poor was a matter that was vitally important to the State*, quite apart from the benefit conferred on the poor, and a law was passed providing for the establishment of legal aid societies throughout Sweden, the local authority to pay half of the expense, and the State to pay the other half. This law became operative in 1920. The law was not compulsory, and the legal aid Societies are gradually being formed. In 1924 six, or possibly eight, had been formed. The Stockholm Legal Aid Society has six attorneys, in addition to the clerical staff.

Swedish law provides that any poor man wishing for court aid may go to a private attorney, who is reimbursed for his services by the State. But, in practice, 90 per cent. of the poor people go to the Legal Aid Society in preference to going to a private attorney. The Legal Aid Society charges fees and undertakes all kinds of legal work.

The Report of the League of Nations as to legal advice and civil court aid in various countries.

The Report by the Secretary-General of the League of Nations to the Assembly, dated 22nd August, 1924, embodying certain recommendations of legal experts, is a very important document, as setting out the position of the poor in 1924 in many countries as to, (*a*) legal advice, and (*b*) civil court aid. And it is set out in the Appendix, as being well worth reading in its entirety by anyone interested in this subject.

The Report expressed the following general opinion: "The organizations which give free legal advice do also, *in the countries where they are most developed, conduct actual litigation for their clients.*" In Germany, Japan, Poland, Sweden, France and Holland there is no rigid poverty test limit. In Spain, the only other country, besides England, where there is a rigid poverty test, the test is double as

lenient as it is in England, for in Spain there is only an income test, which must not exceed *twice* the local salary for a manual worker.

The assistance given is not, in other countries, a matter of discretion, for "an appeal is usually allowed against refusal to grant assistance." There is no such appeal in England.

"Admission to plead as a poor person does not usually give exemption from liability to pay costs to the other party." Therefore the ordinary object of costs acting as a deterrent is obtained.

The United States of America, Norway, Denmark and Sweden seem to be the only countries which have an organized proper legal aid bureau for giving legal advice. Austria, Spain, Holland and Japan have established bureaux in some localities.

Recommendation V. of the Committee of Experts is valuable. It expresses the opinion that it would be desirable

"(1) That each Government should encourage the organization and facilitate the action of official or private associations for legal assistance to the poor.

"(2) That the official or private associations for legal assistance to the poor in the various countries should enter into relations with a view to organizing their systematic co-operation."

Benefits of *civil* court aid given in foreign countries, but not in England.

In the following countries in civil litigation an admitted poor person is, or was, entitled to the following benefits (in addition to representation in court by a lawyer) which are not in England given to an admitted poor person:—

(*a*) In *New York State* and in *Scotland* costs are given to a successful poor litigant, and in such event the State gets repayment of the remitted fees.

(*b*) In *Germany* costs are given to a successful litigant, though he may be an admitted poor person, and in such event, court fees and out-of-pocket expenses (*e.g.*, witness fees) were postponed (*i.e.*, paid by the Treasury), to become payable if the poor person were successful.

(*c*) In *France* an admitted poor person, if successful in civil litigation, gets costs. He also gets court fees remitted, and witness fees, etc., advanced by the Treasury.

(*d*) In *Austria* an admitted poor person is exempt from court fees, witness and expert fees, etc., all disburse-

ments being borne by the State, and a successful poor person gets costs.

(*e*) In *Spain* an admitted poor person is exempt from court fees and deposits.

(*f*) In *Switzerland* an admitted poor person is exempt from court and witness fees: if unsuccessful he is not relieved from the liability to pay the costs of the other side; if successful he is entitled to costs.

(*g*) In *Italy* an admitted poor person is exempt from witness fees, as well as court fees.

Benefits given in foreign countries as to Criminal Court Aid, and not found in England.

In criminal proceedings in foreign countries, which are not referred to in the League of Nations Report, a poor person is entitled to the following benefits (in addition to representation in court by a lawyer) in the following countries:—

(*a*) In *France* an accused person who cannot afford it may get representation by a lawyer. In all cases where there is a jury a prisoner must be represented by counsel. The costs of such proceedings are advanced out of Government funds. A poor prisoner can get counsel without payment. All the expenses, including witnesses, experts, interpreters, etc., are borne by the State.

(*b*) In *Germany* the appointment of a lawyer for a prisoner is compulsory from the first stage of the proceedings in most criminal matters. In other criminal matters the prisoner is entitled to have a lawyer appointed "as of right." The payment of counsel appointed by the court comes out of public funds.

(*c*) In *Austria* in criminal matters the court is, or was, bound to appoint an advocate to defend a prisoner too poor to pay for one, and if the court did not do so, the *omission* would be a reason for *declaring the proceedings void*.

(*d*) In *Denmark* both prosecuting and defending advocates are, or were, paid by the State, and a poor prisoner there has no difficulty in being defended at any stage of the proceedings.

(*e*) In the *Argentine Republic* prisoners are defended by counsel appointed for life at a salary.

(*f*) In *Norway* the expenses of an advocate for a poor prisoner are paid by the State.

(*g*) In *New South Wales and in Queensland* professional assistance, and the payment of the expenses by the

State, are provided in certain kinds of offences where the prisoners are destitute or are aboriginals.

(*h*) In *New Zealand* at the earliest stage of the proceedings a poor prisoner is, or was, provided with an advocate, who received the same fees as the prosecuting advocate, and also money to defray the expenses of the defence.

(*i*) In *Canada*, in cases of poor prisoners, the expenses of witnesses for the defence are, or were, borne by the Government. The Canadian Bar Association has recently appointed a committee to consider (*inter alia*) the position of poor prisoners.

In *America* the following criticism is made on the American system (used in the absence of a Public Defender) whereby the court appoints or assigns counsel to represent a poor prisoner: "In all but capital cases the assignment system is unfair to the attorney, unfair to the accused, and it does not work. . . . It has been a general failure. In part it has become a means of extortion. As a system, both in place and operation, it deserves unqualified condemnation."[1]

[1] R. H. Smith, *Justice and the Poor*.

CHAPTER XI

THE PETITIONS MADE TO THE LORD CHANCELLOR OR GOVERNMENT—THE APPOINTMENT OF MR. JUSTICE FINLAY'S COMMITTEE, AND THE UNFORTUNATE ATTITUDE OF THE GOVERNMENT WITH REGARD THERETO.

Petition of 24th September, 1923—Legal Hospitals, and Resolutions thereon—Petition of 14th July, 1924—Memorandum of October, 1924, as to importance of considering problem as a whole—Appeal of Religious Denominations—Terms of Reference to Mr. Justice Finlay's Committee—Questions and Replies in the House of Commons—A very unsatisfactory position.

The Petition of the 24th September, 1923.

THE Poor Persons Rules Committee was appointed in July, 1923, to enquire and report *only* as to the Poor Persons Rules. On the 24th September, 1923, the Rev. H. R. L. Sheppard, and the Rev. Dr. Scott Lidgett, with twelve other persons who were interested in social questions, and particularly in the provision of legal aid to the poor, presented a petition, in the form of a submission, to the Lord Chancellor, requesting that the scope of the enquiry by this committee might be enlarged, so as to embrace the whole problem of Law and Poverty. The petition was refused on the 16th October, 1923.

Below are set out the material parts of this petition.

Re Poor Persons Rules Committee.

To The Right Honourable The Lord High Chancellor of Great Britain.

WE whose names are hereunto set and subscribed being interested in the subject of Law and Poverty, and each one of us having had practical knowledge of the desperate need of really poor people to receive gratuitous legal advice similar to that given by the Edinburgh Legal Dispensary, as well as other legal help also given by that legal dispensary, and believing that the Poor Persons Procedure Rules only affect less than ten per cent. of the legal needs of those who cannot afford to pay for legal help, and that the problem presented by trying to amend or modify the aforesaid Rules cannot be solved without going into the whole question of Law and Poverty HUMBLY VENTURE TO SUBMIT that it would

be in the best interests of the poor and Country to extend the scope of the present enquiry.

We have read and approve the suggestions made by F. C. G. Gurney-Champion whose paper has been sent to the Secretary of this Committee.

Dated this twenty-fourth day of September, 1923.

Those interested in the petition of the 24th September, 1923, always felt that no voluntary system of legal aid to the poor could be kept clean, honourable, and efficient, unless the real power and control were centred in the London and provincial law societies. It was thought that this direction and control could be better exercised if the law societies nominated solicitors to act as the governing body of some other organization, who would actually administer the legal aid. With the law societies it was proposed to associate Local Authorities (preferably the County Council) to nominate some members, representing specially social workers. It was suggested that the law societies should nominate the majority of the governing body, and that the local authority should only nominate a minority, a possible proportion being three lawyers to one layman.

There is, in Scotland, an excellent legal aid society, called the Edinburgh Legal Dispensary. In England the name "dispensary" has gone out of fashion: and many dispensaries are being turned into hospitals. The term "Legal Hospital" was first suggested in 1884 by F. W. Blunt, a member of the Law Society, in a paper that he read at a Law Society Meeting, advocating legal aid to the poor.

It is important, particularly if subscriptions or donations are to be asked for from the general public, that the name of the organization administering legal aid should be popular.

The name "committee" suggested by the Law Society, and adopted in the Report of the Poor Persons Rules Committee, carries no weight, has no partiuclar meaning, and would not appeal to anyone's imagination. Most committees are mere scaffolding without bricks.

The name "Legal Aid Society" in this country has acquired a very bad reputation. On the other hand, the word "hospital" has acquired a very honourable reputation.

If solicitors alone can bear the whole burden of legal aid to the poor, it does not matter, of course, what name is used. It is not clear yet, whether they can do so. And if they cannot, the question of name will be of some importance.

Legal Hospitals and Resolutions passed by various organizations.

On the 16th November, 1923, the London Federation of Settlements, and at other dates in that year, various other organizations, passed resolutions, a copy of which is set out below :—

Resolutions of London Federation of Settlements, unanimously passed on 16th November, 1923, relating to Law and Poverty, or Justice and the Poor.

1. That the Federation approves the petition or submission made to the Lord High Chancellor dated the 24th September, 1923 and the suggestions and paper written by F. C. G. Gurney-Champion of the same date, both of which were signed (amongst others) by

The Rev. H. R. L. Sheppard, Vicar of St. Martin-in-the-Fields, and formerly Head of Oxford House.
Mr. J. J. Mallon, Warden of Toynbee Hall.
Mr. Arthur Reade, M.A., Warden of Mansfield House.
The Rev. J. W. Graves, B.D., Warden of Browning Settlement.
Commissioner David C. Lamb, International Social Secretary, Salvation Army.
The Rev. T. W. Pym, D.S.O., Head of Cambridge House.
Mr. Michael R. Seymour, Head of Oxford House.
Mr. A. C. Crane, Solicitor, 28 Bedford Row, London.
The Rev. Dr. Scott Lidgett, L.C.C., Warden of Bermondsey Settlement.
The Rev. R. Kennedy Cox, Warden of Dockland Settlement.
J. F. Gordon Dill, Consulting Physician, Royal Sussex County Hospital.

2. That the *objects* the Federation has in view are :—

(*a*) To secure equal justice for rich and poor—more especially administrative justice.
(*b*) To make the equal administration of justice national and local.
(*c*) That where absolutely necessary, on account of poverty, both in civil and criminal matters, which are approved as showing *probabilis causa*, the administration of justice should be free and/or assisted, either in whole or in part, at the discretion of the local hospital committee subsequently mentioned.

3. That the *means* whereby such objects should be attained are :—

(*a*) If possible by a voluntary system under the control of the Law Societies, in the form of Legal Hospitals,

established in every district where there is a Law Society or District Registry, with Committees, where necessary, appointed by the Local Legal Hospital to act in outlying places.

(*b*) If the Law Societies will not undertake this duty, then by the establishment in the before-mentioned places, of officials by Government action.

A copy of these resolutions was sent to the Poor Persons Rules Committee. But probably the Committee and Chairman quite properly felt that the matters therein referred to came outside the scope of the terms of the reference to them. It was quite impossible for that committee to properly consider anything other than the Poor Persons Rules, and matters which came within their scope.

The Petition of the 14th July, 1924.

On the 14th July, 1924, a very influentially signed petition, in the form of a submission, was presented to the Lord Chancellor, and copies of it were subsequently sent to the late, and present, Prime Ministers, and to several members of the present Government. That petition was signed by over one hundred members in the late House of Commons from the three parties in the House, including six out of the eight women members. It was also signed by the Bishop of London, and other leaders of almost every shade of religious thought, and by many social service organizations, missions, settlements, and lawyers. The following is a copy of the petition :—

Re Legal Aid for Poor Persons.

To The Right Honourable the Lord High Chancellor of Great Britain

CRAVING LEAVE to refer to a submission dated the 24th day of September, 1923, made by the Reverend H. R. L. Sheppard, the Reverend Dr. Scott Lidgett, and others, to the Lord High Chancellor as to the Poor Persons Procedure Rules, WE whose names are hereunto set and subscribed, being deeply CONCERNED at the inequality in the administration of justice (including in that term the provision of legal advice) caused by the poverty of a large number of the community, and referring especially to (*a*) the absence of any general national provision for giving legal advice to the poor, apart from local spasmodic charitable efforts, (*b*) the present aid given under the Poor Persons Procedure Rules, (*c*) the absence of any relief or aid in the County Courts, (*d*) the absence of any professional aid in the Police Courts,

and (*e*) the ineffectiveness of the Dock Brief and the Poor Prisoners Defence Act, because the aid thereby given comes too late, and is not given as a matter of right, AND BELIEVING, (1) that those who cannot afford to pay in whole or in part for professional assistance, legal advice, court, and witness fees, are notwithstanding their poverty constitutionally entitled to equal justice—*Nulli vendemus, nulli negabimus aut differemus rectum aut justiciam* (Magna Carta, Cap. 40) and the repealed statute 11 Henry VII., Cap. 12)—(2) that at least 10 per cent. of the population in this country are in the position of not being able to get justice without free or partially free legal aid (Dr. King, "The Wealth and Income of the United States"), which should be given as a matter of right and not by way of haphazard unorganized charity; (3) that it is difficult, if not impossible, to find any remedy without at least considering and enquiring into the whole problem, both civil and criminal, for the root or cause of the trouble is the same in all branches of law, and (4) that it is contrary to public policy and unfair that only one particular section of the community should bear, or be asked to bear, the whole burden of legal aid to the Poor, as is really the position at the present time, except as to those cases which come under the Poor Prisoners Defence Act, HUMBLY VENTURE TO SUBMIT That it is of urgent national importance that an authoritative enquiry, preferably in public, should be made into the *whole* problem, both civil and criminal, with a view to suggesting how, when necessary, the poorer members of the community can be best assisted to obtain equal administrative justice, and further that such enquiry is in the best interests of the poor, the country, and its proper administration and contentment.

DATED the 14th day of July, 1924.

Memorandum of October, 1924, as to the importance of considering the whole problem.

On the 27th October, 1924, a memorandum showing, how impossible it is to solve any particular aspect of the problem of legal aid to the poor without considering the *whole* problem, was sent to the late and present prime ministers, and also to one or two members of the present Government. The following is a copy of the Memorandum :—

Memorandum as to Legal Aid to Poor Persons, and as to the Submission dated the 14th of July, 1924.

THE present Poor Persons Rules Committee is only a departmental committee, of very limited scope; and it has all the disadvantages and drawbacks of a departmental

committee—notably that one cannot before it present and argue in the ordinary legal way any case, calling one's own witnesses. This committee was appointed, because the then Government was forced to do something, owing to the breakdown (or, as Sir Claud Schuster is reported in *The Times* to have said at Plymouth in October, 1923 : " to the almost breakdown ") in the Poor Persons Rules, or the Poor Persons Department.

It is the second committee appointed since 1918 to report on these Rules,—*i.e.*, to report on the same fraction of the legal needs of the poor. The present committee was appointed in July, 1923.

On the 24th September, 1923, the Rev. H. R. L. Sheppard, and others having knowledge of the poor, made a submission to the Lord Chancellor, based on a paper that I wrote asking him to extend the scope of that enquiry. That was refused in October, 1923. It is, of course, very difficult to alter the scope of a committee once it has been fixed, and the committee appointed. And therefore, before any new enquiry is ordered, the submission dated 14th July, 1924, was put in, and will be pressed whatever Government is in power. The result anticipated by those making the submission of the 24th September, 1923, has actually happened. The Poor Persons Rules Committee is still sitting, and still enquiring, and still searching for some remedy on wrong lines. After twelve months of labour on so small a fraction of the legal needs of the poor as 2 or 3 per cent. of that need, it has found no remedy, and has made no report.

It is stated that there are technical and other difficulties. Of course there are. When one is attempting to throw on one section of the community practically the whole burden of the legal needs of the poor, one is attempting what is unfair and wrong. And it is absolutely necessary, in that event, to consider the matter from several different points of view, having nothing whatever to do with the only proper point of view—the point of view of the poor—the point of view of making the administration of justice equal, where poverty prevents that. In consequence, other points of view such as legal education and legal professional etiquette have to be considered.

In this country since the repeal of 11 Henry VII., Cap. 12, an attempt has been made to satisfy the legal needs of the poor on charitable lines by unorganized, haphazard charity. What that position is can be perhaps easily understood if one considers what would happen if a law were passed that

butchers alone were to bear the whole burden of the need of the poor for meat. A very few butchers would give away their best meat and ruin themselves—that has actually happened in law. Some butchers would sell their worst meat at cost price, getting some collateral advantage (it may be only education or advertisement; but in some cases it would be something more substantial) out of something else. This is common in law. Some butchers, under the guise of giving away meat, might perpetrate the most shocking frauds on the poor. That is done in law, by bogus legal aid societies and very low-class solicitors, under the guise of giving free legal advice. But the great majority of butchers would have nothing whatever to do with such an absurd and unfair proposal.

In England at the present time there are powerful organizations interested only in the criminal needs of the poor who, by the way, are inclined to over emphasize the importance of probation officers (who deal with consequences, not causes), and there are also powerful organizations interested only in the civil needs of the poor, particularly the legal advice part of the problem. Neither side has much knowledge of the problem which appeals to the other; each is anxious that enquiry should be held only—or at any rate at first—as to its own particular branch of the problem. As a matter of fact, whether one takes the experience of foreign countries, or what has happened in our own country, it will be quite clear that one cannot solve one particular aspect of the problem of poverty, without considering the *whole* problem. In America, where one legal relief agency confined itself at first to civil matters, and another legal relief agency to criminal matters, both agencies entered the field of the other, and there was overlapping, confusion, waste, and antagonism.

"The essential issues have been overlooked, or confused, and the close relation between the public defender, and the whole problem of injustice to the poor, between the defender in criminal cases and the other remedial agencies, has not been observed. . . . Analytically the two agencies (civil and criminal) are as like as two sessions of the same court; both were called into being by the same general causes, both exist for the same purpose, and both stand in the same relation to the administration of justice. . . . Evolution is fast breaking down any distinction between them. (R. H. Smith in *Justice and the Poor*.)

The *inequality* in England and Wales as to the adminis-

tration of justice, arises *only* because of the poverty of the poorest members of the community. Poverty is the sole cause of the trouble, in whatever branch of law a poor person becomes involved. Remedy that inability of the poor man to pay, or supply the necessary services, whether in the civil or criminal courts, or as to legal advice, and this problem is then solved. It is exactly the same problem wherever it is found in law. And can only be cured by the same remedy, if it is cured at all. When an overcoat is needed, one does not go to one tailor for the sleeves, and to another tailor for the rest of the garment. The need for covering the arms and the body is the same, just as the remedies must be identical. If one went to two tailors, there would be clashing, overlapping, waste, confusion, and probably the need would not be *efficiently* met. It is just the same with the different manifestations of the need of the poor for legal help. The problem must be considered and solved as a whole, or no proper and *effective* remedy can be found for any particular aspect of the problem.

Tracing the history of the English attempts to help the poor legally, whether one refers to the early attempts of the Church in the tenth and eleventh centuries, or to the ecclesiastical courts of the thirteenth century, or to the early king's prerogative, or to the justices in Eyre, or to that great charter of the poor, the statute of 11 Henry VII., Cap. 12 (now repealed), or to the Rules of 1883, or to the present Poor Persons Procedure Rules—it will be found that they all broke down (just as the Poor Persons Procedure Rules have twice in recent years practically broken down) on one and the same rock. The authors of these attempts to help the poor in legal matters had no real understanding of the fact, that the burden of legal poverty manifests itself in several aspects, which are so closely interwoven that the problem must be solved as a whole, or it cannot be solved at all. It is pathetic that those in authority in England have never learnt that lesson. In the words of an American writer on English Poor Persons Procedure, "The problem of poverty in all its different aspects, is an *indivisible* problem."

Those making the submission of the 14th of July, 1924, have endeavoured in the submission itself to show what is set out more in detail in this memorandum. There is profound *legal* prejudice against legal aid being given to the poor, by any other method than by charity. It is believed that there is a Treasury rule or minute that public funds

must not be used for anything else in law than for court buildings and the salaries of the judges.

For these reasons those making the submission of the 14th July, 1924, not only press for an enquiry into the *whole* problem, but they press that that enquiry should not be by a departmental committee, but should, if possible, be a public enquiry, and that it should take place as soon as possible.

27th October, 1924.

In the late autumn of 1924 an influentially signed appeal was published in *The Times* and many other papers. Several of these newspapers published sympathetic and understanding articles and comment. The *Yorkshire Post* for November 24th, 1924, published a very appreciative leading article.

A copy of the Appeal is set out below :—

Justice and the Poor.

There are problems, such as unemployment and housing, which are so obvious that no Government can fail to do its best to find solutions, though those solutions, admittedly, must take time. There are other problems not so obvious but which are of as great, if not greater, importance, because they relate to the causes which produce the other evils. Probably no problem could be more easily or economically solved than the problem presented by the inequality in the administration—as distinguished from substantive law—of justice, caused by poverty, provided the different aspects of the problem (civil, criminal, and advice, or conciliation) are considered and solved as one problem.

We, the undersigned, and many of the leaders of the religious denominations, have signed a petition, dated July 14th last, in which we have attempted to show the desperate need of the poor for legal help, their constitutional right to such help, and the pitfalls to avoid when seeking a remedy ; and we have in that petition suggested that it is of urgent national importance that an inquiry, preferably in public, should be held into the whole problem. We are aware that a Departmental Committee was appointed, so long ago as July, 1923, to consider and report on the smallest fraction of the problem—relating to civil actions by the poor in the High Court—and that that Committee is still sitting and inquiring, having found no remedy. Notwithstanding that knowledge, we ask for an immediate public inquiry into the whole problem.

The State has made provision for the education and health of the poor. Practically it has made no provision for their legal needs, though it is a legal maxim that every one is presumed to know the law—*ignorantia legis non excusat*—and though Magna Carta expressly provided that justice was to be denied to none. The Manley Report of the United States Commission on Industrial Relations (1915) put as the third cause in order of importance for industrial unrest " the denial of justice." We would urge the Government's immediate consideration of the petition of July 14th last, which was signed by over one hundred members of the late House of Commons, including some members of the present Government.

A. F. London.
W. Manchester.
John Kensington.
William F. Brown, Bishop of Pella.
Alfred E. Garvie, President of National Council of Evangelical Free Churches.
J. Scott Lidgett, President of the Federal Council of Free Churches.
W. Bramwell Booth, The Salvation Army.
R. C. Gillie, Moderator-designate of the Presbyterian Church of England.
Arthur Pringle, Chairman of the Congregational Union of England and Wales.
John C. Carlile, ex-President and Acting Secretary of the Baptist Union of Great Britain.
John H. Ritson, President-elect of the Wesleyan Conference.
David Brook, General Secretary of the United Methodists.
Samuel Horton, ex-President, Primitive Methodists, and President, Metropolitan Free Church Federation.
Herbert R. Mumford, Bishop of the Moravian Church.
Lucy Gardner, Society of Friends and C.O.P.E.C.
P. T. K. Kirk, General Director of Industrial Christian Fellowship and Vicar of Christ Church, Westminster.
P. B. Clayton, Hon. Chaplain, Toc H, and Vicar of All-Hallows, Barking by the Tower.
Arthur K. Yapp, National Secretary of the Young Men's Christian Association.
F. C. G. Gurney-Champion.

December, 1924.

Terms of Reference to Mr. Justice Finlay's Committee.

Somewhere about April, 1925, the Lord Chancellor and the Home Secretary appointed another committee under the chairmanship of Mr. Justice Finlay, to enquire what facilities exist for giving to poor persons advice with respect to their legal rights and liabilities, and aid in the conduct of legal proceedings, whether criminal or civil, *other than such civil proceedings in the Supreme Court as fall within the scope of the existing Poor Persons Rules*, and to report what, if any, further steps should be taken in these matters.

It will be remembered that the existing Poor Persons Rules do not enable, (1) a poor person entirely destitute, or (2) a *poor person* who is worth more than £100, or whose income exceeds £4 a week, to take advantage of the Rules. That is, both categories of poor persons do not fall within the scope of such rules. It will be remembered also that the Report of the Poor Persons Rules Committee made no recommendation on the matter.

Questions in the House of Commons to the Attorney General as to scope of the enquiry by Mr. Justice Finlay's Committee and his replies.

Some questions, sadly mutilated by the House of Commons officials, were put to the Attorney-General in the House of Commons on the 29th July, 1925.

They were :—

(40) To ask Mr. Attorney-General whether he is aware that before a poor person can be granted legal aid in the High Court, he must provide a deposit of at least £5 OR [this word was altered by the officials to AND] pay all out-of-pocket expenses, and whether any assistance is projected for persons unable to meet such charges ; whether he is aware that no assistance is at present granted to persons in receipt of more than £4 per week, or worth more than £100 ; and whether it is proposed in any way to aid those poor persons who are able to pay something towards, but not the whole of, the costs and expenses of High Court litigation ?

(41) To ask Mr. Attorney-General whether the Report of the Poor Persons Rules Committee proposes any extension of legal aid to new categories of poor persons in respect of High Court actions ?

(42) To ask Mr. Attorney-General whether the terms of reference to the new departmental committee, under the chairmanship of Mr. Justice Finlay, will enable that committee to consider, and, if thought desirable, to recommend the provision of legal aid for persons so poor that they cannot pay any deposit or out-of-

pocket costs, and those able to pay part, but not the whole cost, both categories of whom are now excluded from legal aid by the existing Poor Persons Rules?

The answer of the Attorney-General, omitting that portion of it which is not material, was :—

" The Report of the Poor Persons Rules Committee (by which I understand the Committee presided over by Mr. Justice Lawrence, which reported in February last) does not propose any extension of the categories of poor persons as set out in the existing Rules, and it is not proposed to afford further monetary assistance to poor persons suing or being sued in the High Court. They have already, both under the existing Rules and under the Rules now proposed, exemption from court fees, the free services of solicitor and counsel, and, when successful, the right to recover out-of-pocket expenses properly incurred from the unsuccessful party. Civil litigation in the High Court is outside the scope of the terms of reference of Mr. Justice Finlay's Committee."

On the 5th of August another question was put to the Attorney-General in the House. It was :—

(41) To ask Mr. Attorney-General whether he is aware that at the present time over four hundred poor persons' cases, where leave has been given under the Poor Persons Rules and where the reporting solicitor has reported favourably as to each case, are waiting, and are unable to be dealt with by the courts because no conducting solicitor will take them up, on the ground that the poor persons concerned cannot provide the out-of-pocket expenses; and whether there is any method or provision, either in the existing Rules, or in the Rules now proposed, whereby a poor person, having no means, can sue or defend himself in the High Court?

The answer of the Attorney-General was as follows :— There are a number of poor persons' cases which have been favourably reported upon, but cannot be dealt with at present because the supply of conducting solicitors is insufficient. The difficulty of finding conducting solicitors for these cases is not due, as suggested in the question, to the inability of these persons to find money for out-of-pocket expenses, but to causes set out in the Report of Mr. Justice

P. O. Lawrence's Committee (Command Paper 2358). It is hoped that when the new system proposed by that committee comes into operation the difficulty will disappear.

The position of these two classes of poor persons is left in a very unsatisfactory state. The Government, through the Attorney-General, states that no further public monies will be provided. The Special Committee of the Law Society emphasizes that there is no obligation on solicitors to find any out-of-pocket expenses. And the Report of Mr Justice Lawrence's Committee (Command Paper 430) expressly lays it down that, unless the Government does find further monetary assistance for the expenses of quite destitute, persons, there must be a total denial of justice to such poor persons in respect of High Court litigation. There must also be a partial denial of justice in respect of High Court litigation to those poor persons able to pay part, but not the whole of the expenses of such litigation. The position is simply preposterous in regard to High Court litigation ; it becomes still more serious when one considers that there is a possibility of this shocking state of things being taken as a precedent for legal aid in the County Court by Mr. Justice Finlay's Committee.

A very unsatisfactory position.

The remedy is difficult, now that Mr. Justice Lawrence's Committee has reported. Probably, although there are obvious difficulties, the simplest procedure to secure a remedy will be, (1) to extend the scope of the enquiry by Mr. Justice Finlay's Committee to cover the facilities and aid necessary for those two omitted classes of poor persons, or (2) to assume that they are already included within the scope of the enquiry of Mr. Justice Finlay's Committee, as, indeed, technically they are, because they are not included within the scope of the existing Poor Persons Rules.

This is a matter that should be at once cleared up. And it is the Government's business to do it. Any unfairness, or want of *straightforwardness* to conducting solicitors, could only prejudice the poor. *One cannot drive volunteers.* The Federation of British Settlements once tried to do that. They called a meeting of settlement lawyers, ostensibly to elect a committee of settlement lawyers, but really in order, through a committee, to give the executive control of the lawyers. The meeting was called. The first resolution which the lawyers proposed and carried, with only two dissentients, was that the lawyers did not want, and would not have, any committee. Thereupon the executive nomin-

ated some lawyers to act as a committee, which may be now possibly masquerading as the committee of settlement lawyers.

When the Report of the Poor Persons Rules Committee was published and it was seen that the abolition of the Poor Persons Department, and the giving of control and administration of legal aid to the law societies, was recommended in the Report, it seemed to be obviously the right course to do and say nothing which could in any way discourage the law societies from taking up this duty of administration; not because there is any special duty imposed on one section only of the community, nor because, as has been suggested, the matter affects the honour of the law societies, unless arrangements have been made or promises given without any consultation with the general body constituting the Law Society; but because it would be in the national interest that the law societies should undertake this duty, if there is to be a voluntary remedy. But, after waiting for some time, it became perfectly clear from the proceedings at the Annual Meeting of the Law Society, which took place before its special report was published, and still clearer after the special report was published, that the Law Society did not propose to remedy any single defect of the Poor Persons Rules; that they only contemplated improved administration; that they only asked for public financial help for certificating and/or reporting solicitors, about whom there had been no trouble or difficulty; that they did not ask for one penny of public money to meet the real root trouble—the out-of-pocket expenses of poor persons; that it was still proposed to exclude from the benefit of the Poor Persons Rules the very poorest of the poor, and also those poor persons to whom ordinary High Court litigation was impossible, but who could pay something towards the cost of it; the result being that except for decentralization, and the creation of a certain amount of legal *esprit de corps*, the handing over of control to the law societies could only be a snare and delusion, unless the law societies were going to find out of their own private monies £500,000 annually, or some sum which it was beyond their power to find, even given the utmost good-will. A step may have been taken in the right direction, but it is such a weak, hesitating step, that it really amounts to no more than a gesture. The bog of poverty has to be crossed, by whatever path one travels. And no provision has been made, or contemplated, for crossing that bog, the method of approach to which, and the tactics adopted in

making that approach, not at any rate appearing to be quite *straightforward*. A serious and difficult problem such as this, affecting probably more than anything else the well-being and contentment of at least 10 per cent. of the population, cannot be properly considered or dealt with by a departmental committee, as was attempted to be shown in the Memorandum of October, 1924, before referred to. The Treasury representative is on the committee, presumably to veto any help to the poor out of public monies, and to suggest how bricks can be made without straw, or how, if any public monies can be spared, they should not be expended on bricks, but on administration of the bricks, if a miracle happens, and some bricks can be made. These departmental committees are animated by great courtesy, and by real open mindedness, not as to making bricks, but as to the administration of the bricks which can't be made.

The Report of the Poor Persons Rules Committee is condemned out of the mouth of the Committee to Enquire into the Poor Persons Rules. And the Report of the Select Committee on the Poor Prisoners Bill is condemned out of the Report itself. The official documents are *alone* sufficient to condemn the recommendations which have been made.

CHAPTER XII

A POSSIBLE SOLUTION OF THE PROBLEM OF LEGAL AID TO THE POOR IN ENGLAND AND WALES

Fundamental Axioms governing any solution of the problem—A possible solution of the civil part of the problem—A possible solution of the criminal part of the problem—Table showing relationship of suggested instruments for securing legal aid to the poor—A suggested scheme for the whole problem—The civil solution is not expensive and does not much offend etiquette—If State does not do its duty in civil matters, or Local Authority in criminal matters, as to finance, subscriptions must be raised from general public—If no funds available, a plea in the interest of Honesty, for Repeal or Annulment of Magna Carta Paragraph 40 and 9 Henry III., Cap. 29.

To find a solution of the problem which poverty creates in the administration of justice, one must not only consider what other countries are doing, what mistakes our own country has made in the past, but it is essential to have in view certain definite fundamental axioms by which any scheme of legal aid which is suggested can be tested. Some of such axioms would seem to be :—

Fundamental Axioms governing any solution of the problem of legal aid.

(1) That as all are entitled to equal justice (Magna Carta Para. 40), persons who cannot, in whole or in part, pay what is necessary to secure the ordinary administration of justice, including in that term legal advice, must be assisted, in whole or in part, to get such equality in the administration of justice ; otherwise the contract between the State and an individual citizen is broken.

(2) That all legal aid should be given as a matter of right.

(3) That just as the poor are entitled to the equal administration of justice, notwithstanding their poverty, so they are not entitled to any special privileges, to which others better off are not entitled ; it being contrary to justice that a poor person, because of his poverty, or because of his sex, should be put into a different position to that of the rest of the community ; and that all privilege, whether for rich or poor, man or woman, is wrong and harmful to the general community.

(4) That in civil matters no legal aid should be provided, unless the applicant has passed two tests, one as to poverty, and the other as to the reasonableness of his claim or defence—in short, the *probabilis causa litigandi* test.

(5) That in defences in criminal matters the only test should be as to poverty.

(6) That a *rigid* poverty test limit is absolutely wrong; must inevitably create a privileged class of poor person; leads to trickery, evasion, and deliberate change of circumstances; must prevent large numbers—probably the majority—of poor persons from getting justice; encourages, indeed creates, the worst class of speculative lawyer; and fails to secure the equal administration of justice to all.

(7) That the poverty test should be to render legal aid in whole or in part, to all who cannot elsewhere procure the necessary and ordinary legal aid to secure justice, regard being had to the circumstances of each case, which should be considered on its merits.

(8) That it being contrary to public policy, and unfair, that the whole burden of any particular need of the poor should be borne by only one class or section of the community, it is not only unfair, but impracticable, that lawyers alone should be asked, without assistance, to themselves alone provide the legal aid required by the poor.

(9) That with due regard to economy, efficiency, and permanency, it is impossible to find any proper solution of the problem of legal aid to the poor, without considering the whole problem in all its different aspects, and providing one and the same organization, which shall be national as well as local, for controlling and administering the whole of the legal aid given to the poor.

(10) That the most important aspect of the problem—indeed, the key to the solution of it—is legal advice, the greatest need of the poor being to know what are their rights and remedies, their duties and their liabilities; and that this advice—often necessary in criminal matters, and always necessary in civil matters—would probably cover over 50 per cent. of their total legal needs—being given at earliest date.

(11) That the character of the legal advice—the ultimate object of it, where possible—should be *conciliation*

out of court; thus keeping the poor out of the courts, whilst still giving them their legal rights.

(12) That in court work, the poor cannot get proper or ordinary legal aid from counsel alone, not properly instructed by a solicitor.

(13) That a conducting solicitor, who *for a long period* is responsible for carrying on litigation, which in ordinary cases, and if properly done, must involve a very great deal of clerical work, which the solicitor cannot, or does not, do personally, and must therefore himself pay out of his own pocket, is in an entirely different position to that of any other lawyer, whether counsel, reporting solicitor, or certificating solicitor.

(14) That it is unfair to ask any lawyer—counsel or solicitor—when giving gratuitous legal aid to the poor to give anything more than his own personal service, clear of any sort of out-of-pocket expense.

(15) That compulsory service by lawyers of either branch of the profession is the worst possible form of service in the interest of the poor, considering their interests alone; that it is foreign to our customs and our traditions; is not found in operation in any other profession or calling; and in no sense could give the poor equality in the administration of justice.

(16) That the poor are entitled to advice and representation by lawyers, who are competent and experienced—in short "learned by their discretions"—11 Henry VII., Cap. 12—and not by laymen, clerks, or very young inexperienced lawyers, without supervision.

(17) That whatever form the organization takes, whether through the law societies, the State, or some semi-official body like a "Legal Hospital," it is essential that bureaux or offices should be established throughout the country—the District Registries would indicate the districts where the need lay—which would do for the poor the ordinary work of a solicitor's office and be *primarily* responsible for the whole of the legal aid in each district.

(18) That whatever form the organization takes, it is absolutely necessary in the interest of the poor and of justice, that one whole-time, *competent* solicitor, with a proper whole-time staff, properly remunerated, should be engaged for each bureau or office in all the districts; this being the universal practice of all the legal aid societies in the United States of America.

(19) No *voluntary* or semi-official organization can be kept clean, and efficient, unless the controlling power is in the hands of the Law Society and provincial law societies, or unless the majority of the governing body of any voluntary organization is nominated by the law societies.

(20) No legal aid system, not providing *legal advice* as the *first requisite,* is worth any consideration.

Subject to these axioms, it does not apparently matter what form the organization takes. If it were not that probably at the present time the most pressing need for our country is economy, much could be said in favour of a State organization, provided it were not starved, or bound up too much in red tape. Those in authority are seeking a voluntary or semi-official solution, and as to one small branch of law it is reported that the Government has definitely decided on a voluntary solution. If that is so, the great necessity of having all legal aid given through one and the same organization rules out, for the time being, any official organization. The defects of the voluntary scheme suggested by the Poor Persons Rules Committee have already been referred to. Those defects will be still more obvious if the Report is compared with the axioms.

Though economy is essential—false economy is fatal. If proper legal aid is to be given to all the poor entitled to it by Magna Carta, it is obvious that, with the maximum of voluntary service, there must be considerable expenses to pay. Medical men do not provide out of their own pockets for the expenses of the building and maintenance of hospitals, of materials or medicine, of clerical assistance by nurses, house-surgeons, or physicians. These expenses are met by voluntary donations or by payments by patients, *according to their means.* If the State or local authority, or both jointly, do not pay the necessary expenses, as they do in Sweden and other countries, funds must be raised from the general public by subscriptions and donations. In that event the name " Law Society Committee " would not appeal very much to the general public, though possibly it might appeal to lawyers.

If a poor person were put in the same position as an ordinary litigant with regard to civil litigation, then, except possibly as to divorce matters, where sometimes there are very large out-of-pocket expenses, and where both parties are generally poor and unable to pay any costs, it would seem possible for the organization to properly provide for the whole of the civil needs of the poor in all the courts,

including also legal advice in civil and criminal matters, provided :—

A possible solution of the Civil part of the problem of legal aid.

(*a*) Court fees are remitted in all the courts to certificated poor persons, the fees being repaid to the Government, if and when the poor person succeeds in the litigation and recovers costs, like an ordinary litigant; this being Scotch practice.

(*b*) That a poor person, being a party to legal proceedings, when successful, should in the ordinary way, like an ordinary litigant, be entitled to ordinary costs; and that when he is unsuccessful he should be liable, like an ordinary litigant, to pay costs, whether or not that liability is worth anything to the other side.

(*c*) That there should be no *rigid* poverty test limit whether as to advice in civil and criminal matters, or for civil and criminal court aid—the test being what, if any, and if so how much, legal aid it is necessary to provide for the poor person in the interests of justice, regard being had to all the circumstances of his particular case, and to the impossibility of his procuring legal aid, in whole or in part, from any other source.

(*d*) That poor persons who can, in civil proceedings, pay something towards costs and expenses, but not the whole of them, should pay to the organization as much as they can afford.

(*e*) That the poverty test should be the only test required with regard to legal advice, or criminal defences, but that for civil litigation in all the civil courts, and also for semi-civil proceedings [such as proceedings under the Summary Jurisdiction (Married Women) Act, 1895] in the criminal courts, a poor person wishing to take or defend or be a party to such legal proceedings, should also be required to pass the *probabilis causa litigandi* test; and that both such tests should take place in the office or bureau hereinafter referred to, more or less in the manner suggested in the Report of the Poor Persons Rules Committee [Command Paper 2358].

(*f*) Except as to legal advice, when the poverty test need not be so formal, both tests should take place before special committees; the majority of whom should be lawyers nominated by the law societies, with a minority composed of social workers, nominated by

the local authority ; all nominations to be approved by the Lord Chancellor ; the committee sitting in its own room at the bureau or office hereinafter referred to.

Very possibly it may be found convenient, as making for efficiency, and economy, to combine these special committees with the governing body, hereinafter referred to ; or rather, to make such special committees the governing bodies, as was suggested by the Report of the Poor Persons Rules Committee [Command Paper 2358] ; but as that Report was only concerned with a very small fraction of the problem of legal aid, it would not have considered the magnitude of the present problem.

(*g*) That throughout England and Wales in proper districts —the High Court District Registries would seem to give some guide—there should be established under the control of, and responsible to, a governing body (hereinafter referred to), bureaux or solicitors' offices, for the purpose of giving to poor persons legal advice and legal aid in civil and criminal proceedings, where a whole-time solicitor and staff should be regularly employed, and properly remunerated, and which should be open always at ordinary office hours ; and where, two or three times a week in the evening, between the hours of 6 and 10 p.m., free advice by volunteer lawyers can be given ; and also where the reporting or certificating lawyers can meet and hear and decide applications.

(*h*) That each district, whether it is the High Court District Registry area, or the area covered by a Law Society, having a proper bureau or office, should make that bureau the headquarters and the chief office for dealing with all legal aid to the poor in the district ; and that such chief office should organize and make provision for legal aid to the poor in the outlying parts of the district, whether by establishing, when absolutely necessary, sub-offices, or preferably by the creation throughout the whole area of the district, of small committees of lawyers, which in very sparsely populated places might only consist of one lawyer, who, under the supervision of the chief office or bureau, would be responsible for legal aid to the poor in the outlying parts of the district. Probably it would only be necessary for the local authority to nominate social service workers, on the governing

body of the chief bureau or office, sub-offices (if any) and outlying committees, having only the occasional voluntary service of social workers in each locality.

(*i*) That the governing body should be (*except as to London*) either the local Provincial Law Society or lawyers nominated by such Provincial Law Society, being a majority, and some social workers nominated by the local authority, being a minority : that such governing bodies should be federated or associated with the London Law Society, or to some governing body nominated by the London Law Society (hereinafter called the National Organization), and should submit to a certain amount of control by the national organization, which should also be responsible for legal aid in the London district.

(*j*) That the problem of *organized* free legal advice should be solved by *linking* it up to the problem of the conducting solicitor, and by solving it through the conducting solicitor in the following manner:—(1) all voluntary organizations like Poor Man's Lawyer Meetings may continue as at present to give legal advice. But no court fees are to be remitted in the cases of poor persons, whether civil or criminal, unless the conducting solicitor acting for such poor person is approved by, and working with, the governing body, and giving a certain specified amount of free legal advice, as directed by the governing body. Thus, though the problem of free legal advice is the most important aspect of legal aid, it is easier to solve it through the conducting solicitor, and though he would have to do more gratuitous work than the ordinary speculative solicitor, who in certain cases does give free legal advice, the conducting solicitor could afford to do so, because he would get the benefit of the remitted fees, which an ordinary speculative solicitor would not get. The solution therefore of the legal advice part of the problem lies through the conducting solicitor, and not through Poor Man's Lawyer Meetings, unless they become organized, and linked up with a national organization or one of the governing bodies. The suggestion therefore is :—

(1) No fees to be remitted where the conducting solicitor is not giving free legal advice, and is not connected with a governing body.

(2) In all cases the conducting solicitor to be paid his full out-of-pocket expenses, and a proportion of the profit costs of successful litigation—say one-third.

(3) The governing body to take the balance of the profit costs—say two-thirds.

(*k*) That the bureau or office should, in ordinary office hours, give free legal advice, and so far as was practicable, and necessary, act as a conducting solicitor : its finance and the finance of the governing body being provided as follows :—

(1) By costs from those poor persons who can pay part, but not the whole cost of litigation.

(2) By the proportion of profit costs (say two-thirds) received by conducting solicitors for conducting successful poor persons' litigation.

(3) By two-thirds of the fees allowed on taxation for counsel in successful poor persons' cases ; the other third of such fees being taken by counsel.

(4) By the whole of the profit costs for those successful cases directly taken up and conducted by the bureau or office.

(5) By the provision by the State (and the upkeep thereof) of proper office buildings.

(6) In matrimonial matters, which now are, or ought to be, covered by the Poor Persons Rules, by the State providing for those necessary out-of-pocket expenses (including a husband's liability for his wife's costs) which the poor person is unable to pay, and which are necessary to secure justice.

(*l*) That counsel should, as they do now, receive no fees when acting in unsuccessful poor persons' cases, but that they should receive one-third of the ordinary fees allowed on taxation, in successful litigation for poor persons, the other two-thirds of the ordinary fees so allowed being taken by the national organization.

(*m*) That reporting counsel, reporting solicitors, and certifying solicitors, are given honour, instead of cash, by making them, unless they are obviously unsuitable, Justices of the Peace.

(*n*) That the bureaux, offices, and solicitors, giving free legal advice, be instructed to encourage " conciliation

out of court," and that all Rules prohibiting the settlement, or discontinuance, or compromise, of any litigation by poor persons, without the consent of the court or judge, be abolished : but that it shall only be necessary before such proceedings can be discontinued, settled, or compromised, that the leave of the bureau or office should be obtained, under conditions or rules laid down by the national organization.

(*o*) That conducting solicitors, *when acting for certificated poor persons*, should be in exactly the same position as counsel are now in, with regard to claims for negligence made against them.

It would seem possible in all the criminal courts to put a poor person, or poor undefended prisoner, in the same position as an ordinary prisoner or accused person able to pay for his defence, including also legal advice in criminal matters, provided :—

(*a*) The bureaux or offices before referred to acted also as " Public Defenders," at least in so far as the organization of, and finding lawyers for, poor persons' defences in the criminal courts.

(*b*) That the bureaux or offices in criminal matters, (1) instruct conducting solicitors to represent poor undefended prisoners or accused persons in the Police Courts, (2) brief counsel to defend such prisoners at Assizes and Quarter Sessions. And that (as criminal work is of a more disagreeable character than civil litigation) such solicitors be not required (as in civil cases) to give free legal advice to the poor.

(*c*) That the bureaux or offices, in addition to acting as Public Defenders, give free legal advice to the poor in criminal matters, including both prosecutors or complainants, and prisoners or defendants, as part of the ordinary duty of the bureaux or offices. But that they do not act for prosecutors (there being a Public Prosecutor), but do act for complainants of a semi-civil character (such as in bastardy applications) in proper cases.

(*d*) That the expenses of all poor prisoners or defendants, including witnesses' expenses, copy depositions, etc., and the fees of solicitors and counsel be allowed and paid by the local authority, in the same manner as the expenses of a prosecution, as provided by the Costs in Criminal Cases Act, 1908, the said Act being

made applicable so far as is necessary to cases disposed of summarily in the Police Courts.

(*e*) That all poor persons, when seeking advice in criminal matters, from the bureau or committee, may be asked, in proper cases where they can afford it, to pay a fee for such advice, the fee to go to the funds of the governing body. That advice in criminal matters is not to be refused, if a poor person is not reasonably able to pay a fee for it.

It would seem to be too dangerous, owing to the state of mind and position of a poor prisoner, to introduce the doctrine of part-payment into Criminal Court work. Nor is it so difficult for a prisoner in criminal matters, who can pay part of the ordinary costs, as it is for a poor person so situated in regard to civil matters, to get representation and court aid without assistance.

The suggestion therefore as to the finance of the criminal part of the problem is:—

(1) That the bureaux or offices should receive fees for advice from those poor persons able to afford to pay for it.

(2) That the local authority should pay the expenses of a poor prisoner, including proper fees to solicitors and counsel.

(3) That if the bureau itself acts as a solicitor in criminal proceedings, it should receive expenses and fees in the same way.

(*f*) That as the Report of the Select Committee on the Poor Prisoners Defence Bill recognized the importance of securing "competent and experienced solicitors and counsel" to represent poor prisoners, "and that they should be remunerated," the remuneration authorized by the Regulations of the Secretary of State under the Poor Prisoners Defence Act, 1903, may be so reasonably increased as to make it possible that poor prisoners may be defended by competent and experienced solicitors and counsel.

(*g*) That in criminal matters all the expenses of poor prisoners and all remuneration to solicitors and counsel should be paid by the local authority direct to the bureau or office; and that no solicitor or counsel acting apart from the instructions or authority of the bureau or office shall be entitled to receive from the

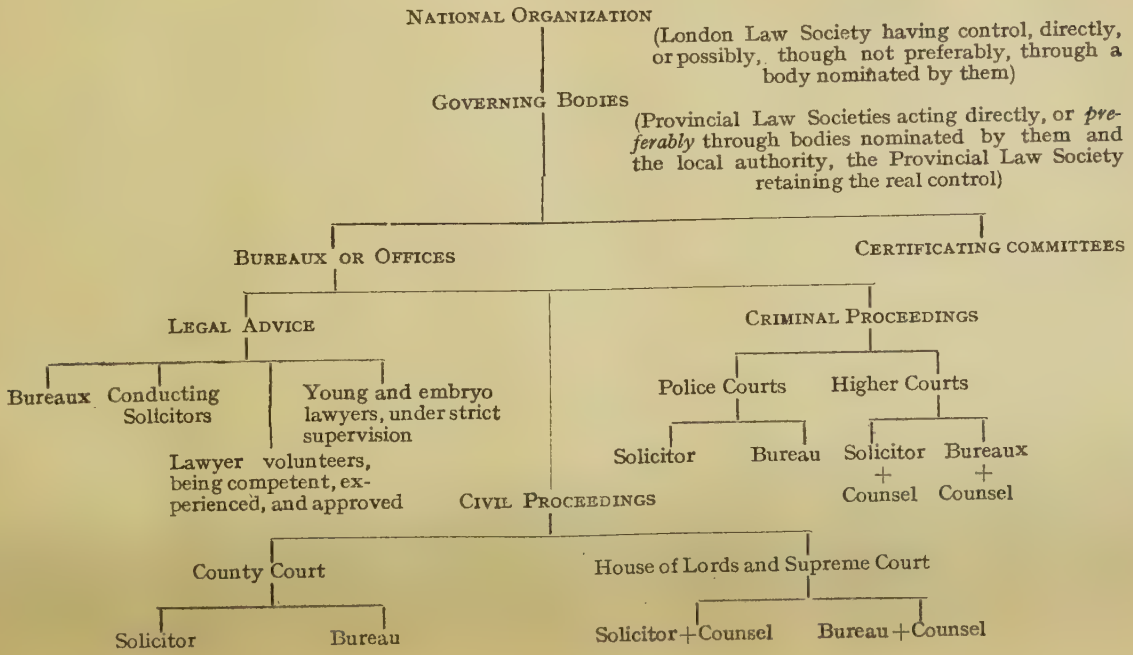
local authority any expenses or fees—the result being that the Poor Prisoners Defence Act, 1903, would have to be repealed, and a new statute enacted, whereby in all the Criminal Courts poor prisoners or poor persons can be defended properly through the bureau or office, the expenses of such defences being paid by the local authority to the bureau or office.

The annexed Table may make clearer the suggested relationship of all the different instruments for carrying out a national organization for the whole of the legal aid required by the poor, whether for advice or civil or criminal court aid.

The suggested scheme is :—(1) That poor persons who cannot afford in whole or in part, under the particular circumstances of each case, to be parties to civil or criminal proceedings, should be given such legal aid, in whole or in part, as will enable them to have ordinary and reasonable facilities for securing justice, and that some contribution should be made by the State towards civil legal aid, and by the local authority towards criminal legal aid ; (2) that a *rigid* poverty test limit and all unreasonable prohibitions of conciliation and settlement should be abolished ; (3) that in successful poor persons' civil cases ordinary costs should be allowed, a poor person being liable for costs when unsuccessful ; (4) that all legal advice should be free, except as to certain criminal matters, and that its object should be to attain conciliation out of court, this result being obtained by linking advice up with the conducting solicitor ; (5) that, whether the organization is by the State, or voluntary controlled by the law societies, the basis or foundation of the organization for administering legal aid, whether civil, criminal, or as to advice, should be a properly constituted bureau or solicitor's office established in districts where there is a High Court District Registry, with a whole-time, properly paid solicitor and staff, and that such bureaux should be linked or associated together through some central organization in London ; (6) that counsel and solicitors employed for court work in all courts should be competent and experienced, and that no counsel should undertake court work without being properly instructed by a solicitor ; (7) that no State or local authority legal aid (whether by way of remission of court fees, or by way of payment for fees or expenses) should be granted to the solicitor or counsel of any poor person, if they are not directly or indirectly instructed by the bureau, though of course such restriction would not

A suggested scheme for the whole problem of legal aid.

TABLE SHOWING RELATIONSHIP OF SUGGESTED INSTRUMENTS FOR SECURING LEGAL AID TO THE POOR


NATIONAL ORGANIZATION
(London Law Society having control, directly, or possibly, though not preferably, through a body nominated by them)
GOVERNING BODIES
(Provincial Law Societies acting directly, or *preferably* through bodies nominated by them and the local authority, the Provincial Law Society retaining the real control)
BUREAUX OR OFFICES
CERTIFICATING COMMITTEES
LEGAL ADVICE
CRIMINAL PROCEEDINGS
Bureaux
Conducting Solicitors
Young and embryo lawyers, under strict supervision
Lawyer volunteers, being competent, experienced, and approved
Police Courts
Higher Courts
Solicitor
Bureau
Solicitor + Counsel
Bureaux + Counsel
CIVIL PROCEEDINGS
County Court
House of Lords and Supreme Court
Solicitor
Bureau
Solicitor + Counsel
Bureau + Counsel

apply to a poor person acting in person; (8) that in criminal matters the only test should be as to poverty, and in civil matters there should be a further test as to there being a reasonable cause of action, both tests to take place at the bureaux or places connected therewith, preferably by committees nominated by the law societies and local authorities, the majority belonging to the law societies; (9) that the control of each bureau should be in a law society or some organization nominated and controlled by a law society; (10) that conducting solicitors and counsel in civil proceedings should be paid the whole of their out-of-pocket expenses, and in successful proceedings should receive part of the profit costs or fees; (11) that if these suggestions are not enough to give poor persons the equal administration of justice, then *at all costs* such further provisions must be made as will enable the poor to enjoy the legal rights granted to them by the constitution, in common with the rest of the community; or the constitution should be amended, and should expressly stipulate that justice shall be denied to persons too poor to be able to get the rights so granted.

Such a scheme, whether administered by the State, or preferably by the law societies, would, it is thought, give the poor real equality in the administration of justice, and would secure to them their constitutional rights.

It will be noticed that, as affecting *legal advice and civil court proceedings*—

(*a*) The only expenses falling on the State by such a suggested solution would be:—

(1) The provision and upkeep of bureaux or offices.

(2) The provision of a fund, as was contemplated by the Poor Persons Rules, 1914, for the payment of the out-of-pocket expenses of poor persons in matrimonial proceedings.

(3) The permanent remission of court fees, *only* in those cases where the poor person was not successful.

The Civil solution is not expensive, and does not much offend etiquette.

(*b*) The only legal etiquettes which would be offended by such a solution seem to be:—

(1) That counsel should give part of their fees to a national organization, or to a governing body, in successful cases, and that they should agree to take no fees, as they do now, in unsuccessful cases.

(2) That solicitors should, in successful cases, pay part of their profit costs to a national organization or to a governing body.

(*c*) Such abolition of rules and etiquette, and the payment of some profit costs to counsel and solicitors, might lead to abuses. But if the control is really in the hands of the law societies, there is no doubt at all that any abuse would be very rigidly and effectively remedied and guarded against. The tendency of any law society is to be ultra-professional. One of the main objects of a law society is to keep the profession clean and honourable. And in those cases where jurisdiction has been given as to discipline, it has been remarkably well and strictly exercised.

Unless the solution of the problem is going to be through the law societies, it is not suggested that all the provisions in the suggested scheme would be proper. But if control is effectively in the hands of the law societies, whether they act directly by committees or, preferably, through some new organizations where they nominate the majority on the governing body, there would seem to be no objection to making the procedure as simple and inexpensive as possible.

(*d*) If the State does not, (1) remit fees in all cases of legal proceedings by poor persons, when unsuccessful, (2) provide a fund for the out-of-pocket expenses of poor persons in matrimonial proceedings, (3) provide and maintain the necessary buildings for bureaux or offices, it would be necessary to appeal to the public for voluntary subscriptions and donations, in the same way as do medical hospitals; in which event the name of the organization becomes very important; and it is suggested that as the name Legal Aid Society has in this country acquired such a bad reputation, that the name "Legal Hospital" might be suitable.

(*e*) In spite of the Poor Persons Rules Committee's Report [Command Paper 2358] having maintained that there are only two systems of legal aid, namely, by the State, or by lawyers, there would seem to be no objection to a semi-State or semi-official system, if the law societies would not undertake the responsibility of control. If they are willing, then the less State control there is, the more easy it will be to work

the system. There is, of course, a good deal of semi-official control found in educational and health organizations.

It will also be noticed that, as affecting *criminal proceedings and advice in criminal matters*:—

(*f*) By such a system no expenses would fall upon the State in connection with poor prisoners' defences or for advice in criminal matters. But the expenses of the defence of poor persons in all the criminal courts would fall upon the local authorities, in more or less the way already provided by the Poor Prisoners Defence Act, 1903.

(*g*) It would seem preferable that in criminal court work, the bureau or office should, where possible, instruct an outside solicitor, until at any rate the system has been tested.

(*h*) If the local authority (or alternatively the State) does not in all the criminal courts provide for the expenses of the defences of poor prisoners, including proper remuneration to solicitors and counsel, at such a rate as will attract competent and experienced men, it would be necessary to appeal to the general public for voluntary donations and subscriptions, in which event the name of the organization becomes very important.

(*i*) Unless a voluntary solution is going to be through the law societies, in such a way that they really control the voluntary administration, it is not suggested that all the before-mentioned provisions would be proper.

(*j*) If they wished to do so, the law societies could solve the difficulty as to getting "competent and experienced" counsel to represent poor persons, because they could insist that counsel instructed in their ordinary private work, should take up some briefs in poor persons' cases. But if the solicitors' part of the problem can be properly solved by the law societies, through the bureaux or offices, the counsel part of the problem will not be so urgent as it is now. It is the combination of inexperienced or incompetent solicitors, with young inexperienced or incompetent counsel, *acting together*, that makes the position of poor persons in court so shocking and acute.

No attempt has been made to give details in the rough scheme before indicated. All that has been attempted

is to show in broad outline how all the difficulties and all the mistakes of the past could be remedied by voluntary effort, under properly organized professional control, so as to give the poor justice (not charity) and real and complete equality (not privilege) in the administration of justice in England and Wales, and how that could be done without any large expenditure from public monies—probably less than one per cent. of the money spent on the free education of the poor ; and Magna Carta, whilst enacting that justice should be denied to none, made no stipulation at all about education.

Control by one national organization, which is hinted at, but not clearly insisted on in the Report of the Poor Person Rules Committee, is of vital importance. The defect of the United States legal aid societies is, that in spite of their newly-formed Association of Legal Aid Organizations, there is no very close unity amongst such organizations, nor do they all belong to the Association. A national organization in this country might also act as a Record Office.

If such a scheme, whether voluntary or by the State, is to be brought into operation in this country, it is absolutely necessary that legal proceedings in the Supreme Court should be brought within the scope of the scheme. The legal position of poor persons in the Supreme Court is governed by the Poor Persons Rules and that unsatisfactory Report of the Poor Persons Rule Committee (Command Paper 2358). Such Poor Persons Rules do not apply to appeals by poor persons to the House of Lords, which again has a different procedure, and different provisions, relating to poor persons' appeals. In order that there may be a complete permanent solution of the problem of legal aid to the poor, it is necessary that Mr. Justice Finlay's Committee should have power to enquire into the legal position of poor persons in the Supreme Court and, if possible, in the House of Lords. The difficulty, of course, is that Mr. Justice P. O. Lawrence's last committee has recently again reported on the Poor Persons Rules. But that committee could find no proper solution of the difficulties connected with the Poor Persons Rules, without enquiring into the whole problem of legal aid to the poor. The Poor Persons Rules Committee had no chance, or opportunity, of finding a solution in the restricted field where they were operating. And because of that it is hoped that no technical, or amour-propre, difficulties will be raised, as to extending the scope of the enquiry or terms of reference, of Mr. Justice Finlay's Committee, so as to embrace the problem of legal aid in the Supreme Court and also, if possible, in the

House of Lords, and thus have an enquiry into the whole problem of legal aid in this country. The really practical points to be gained by such extended reference are :—

(1) The abolition of the *rigid* poverty test limit.
(2) The provision of a fund for payment of out-of-pocket expenses in matrimonial suits.
(3) The abolition of restrictions and clogs which make the position of the conducting solicitor impossible—*e.g.*, the liability for negligence, when counsel is not so liable ; the hindrances to a compromise or settlement ; the non-payment of the whole of such solicitor's out-of-pocket expenses ; and the failure to put a successful poor person in exactly the same position with regard to costs (though he may have court fees remitted subject to subsequent payment, if his action is successful), as is an ordinary litigant ; a poor person being both penalized and privileged by his poverty ; the privilege being swallowed up by the penalty.
(4) The provision of advice as the first step when a poor person gets into legal difficulty.

Tack these three reforms on to the Report of Mr. Justice P. O. Lawrence's Second Committee, and add any consequential amendments, and the Report might, without great difficulty, be made to fit into a general national scheme of legal aid to the poor. It may be that our Government is not strong enough, the opposition in the House of Commons being so weak, or has not the courage and wisdom, to admit making this very small mistake, and rectifying it in time. But though it is a very trivial mistake, which can be rectified now by a couple of lines of writing, it may cause great trouble in the future, and at least it must have these results :—

(1) Either Mr. Justice Finlay's committee will take the Report of Mr. Justice Lawrence's Second Committee as a precedent for civil legal aid in the County Court, in which event there will be no real equality in the administration of justice, where poor persons are concerned, in any civil litigation in England.
(2) Or poor persons will have different rights, legal aid of a different character, and different rules, with regard to legal aid in the County Court, and Supreme Courts.
(3) There can be no general national scheme or organization for legal aid to the poor in England and Wales.

The impossibility of, and the objection to, solving the problem of legal aid piecemeal are sufficiently explained in the memorandum dated 27th October, 1924 (referred to in the

previous chapter), a copy of which was sent to the Government before the appointment of Mr. Justice Finlay's Committee.

If the question of economy is not important, it would of course be possible to give the poor equality in the administration of justice by dealing with the problem piecemeal, and appointing many departmental committees to suggest remedies from time to time. England always does muddle through sooner or later, at the cost of some suffering, much waste of public money, of confusion, and overlapping. These departmental committees will have done incalculable good to the poor, and therefore to our country, if they have done nothing more than call attention to a crying evil, which is in truth sowing the seeds of anarchy, is responsible, as the root cause, for many wrongs and grievances, and gives a legitimate excuse to those who are seeking to overthrow a constitution, the express written benefits of which are denied to them.

Kansas City, in the United States, when it established an organization which provided free legal aid to the poor, put up this notice :—" Justice in this city has been placed on the free list, with religion, education and health." That is really the ideal at which to aim. But if, as is in fact true, our country cannot now afford to reach that ideal, it is at least bound to honour its contract and to carry out the constitution, which provided that justice should be denied to none. The scheme suggested is by no means ideal. For its proper working, it is absolutely dependent upon the goodwill of the profession and of the law societies. Given that goodwill, it would be possible to make the administration of justice equal, so far as poor persons are concerned, by means which would not be so grossly unfair to the profession, nor so impossible, because not so impracticable, as the Poor Persons Rules or the Poor Prisoners Defence Act ; and if the practice of conciliation out of court is fully developed, it may eventually be found that the cost of removing this long-standing denial of justice to the poor will not, after all, amount to more than a fraction of what the Treasury pessimists anticipate. Even if common sense is substituted for etiquette, common fairness for privilege and prejudice, an honest facing of the problem for the absence of *straightforwardness*, and justice for charity, it must still cost the country something. But if the country can understand and realize the true position, it will force its rulers to do, what it has called them to do—to govern according to the *existing* constitution.

If the administration of justice is not in fact going to be made equal, and if the constitution is not going to be amended so as to authorize the denial of justice to the poor, there must result either chaos or anarchy. Some would add the further alternative of revolution. If Magna Carta is part of the constitution, if it did enact that justice was to be denied to none, and if the absence of legal aid does, in fact, cause a denial of justice, the contract between the State and the individual is broken. The State has not performed its part of the bargain, and there is really a total failure of consideration for the allegiance of the citizens, so denied justice by the State. If the State has not the funds to carry out its duties, about which there can be no real contention or doubt, and if funds cannot be raised by voluntary donations, the State should repeal by constitutional methods, the laws or that part of the constitution, which impose on it duties which it cannot perform. And if our Government is honest and straightforward, it should tell the country bluntly that it cannot give, having regard to the finances of our country, sufficient genuine, effective legal aid to the poor as will make the administration of justice equal, so far as poor persons are concerned. And, in such circumstances, the Government, if it is honest, should bring a Bill into Parliament to abolish the fortieth paragraph of Magna Carta, and 9 Henry III., Cap 29, at any rate so far as poor persons are concerned. That is the obvious duty of any Government that cares two straws about uprightness.

A plea, in the interest of honesty, for the Repeal or Abolition of Magna Carta, paragraph 40, if no funds are available.

A Government represents, or ought to represent, the majority in any country. That majority has, or ought to have, the power to alter and make the laws by which the minority is, or ought to be, bound. There is no justification, moral or legal, for revolution, or force, by a minority, against a majority complying with and carrying out the *existing* laws of a country, whether the minority thinks such laws good or bad, and notwithstanding the fact that such existing laws may be harsh, unconscionable, and unjust, to the minority. But if the majority does not carry out the *existing* laws, and if the rulers of any country do not properly administer the existing laws, *or* make rules contrary to law, can it be still maintained that there is no justification for revolution? In such a case, whether justifiable or not, the minority would have no other remedy, and could have no sympathy with the majority, because it has the power to alter, and make the laws conform to its practice, which power would be exercised, if honesty of purpose were intended. If our

Government will not, or cannot, give the poor genuine, effective legal aid, let them bring a Bill into Parliament to repeal or abolish the fortieth paragraph of Magna Carta, and 9 Henry III., Cap. 29, so far only as the poor are concerned.

It should be noted that the fortieth paragraph of Magna Carta was re-enacted with other parts of Magna Carta as a statute in the reign of Henry III. Magna Carta, the real foundation of English liberties, though it practically only re-enacted previous Anglo-Saxon laws, is loved by Englishmen, all the world over. To a lawyer it is something almost sacred. The *Statutes at Large* describes how, in the earlier ages, in the rude state of human government, "whilst personal strength and courage were chiefly held in esteem, as qualities most leading to honour and security, men yielded with reluctance to the obligations of civil institutions, which were calculated to abridge and restrain their *natural rights* and prerogatives." King John's Magna Carta does not appear in the Statute Book or in the Statutes at Large. But the 40th Article of King John's Magna Carta was made part of the law of the realm by 9 Henry III., Cap. 29, the words used being practically the same as in the earlier Charter :—"*Nulli vendemus, nulli negabimus, aut differemus, rectum vel justiciam*;" the Statutes at Large giving the following English translation :—"We will sell to no man, we will not deny or defer to any man, justice or right." This again was confirmed by 25 Edward I., Cap. 1.

The law of this land being quite clear, is it not the duty of the Government and Legislature, without delay, to carry out the law? And if they are unable to do so, honourably and fully, should they not amend the law so as to make it conform to the actual practice?

If our rulers cannot make the administration of justice equal, where poverty alone prevents equality, let them repeal 9 Henry III., Cap. 29. In no other way can a legitimate excuse for revolution be avoided. With great deference, a short suggested draft Bill, which might be called Poor Persons (Honesty) Bill, 1925, is set out in the Appendix, in the hope that if the Government can pass it, at least we can get back to honest administration, and at least the country may then understand where it really is, with regard to the administration of justice.

APPENDIX I

DRAFT BILL AMENDING MAGNA CARTA, ARTICLE 40, AND 9 HENRY III., CAP. 29.

DRAFT BILL to amend and make the provisions of Magna Carta Article 40, and 9 Henry III., Cap. 29, conform to the present position of, and the practice with regard to, poor persons and the administration of Justice, in England and Wales.

Reciting the 40th Article of Magna Carta.

Reciting 1 Henry III., Cap. 1, 9 Henry III., Cap. 29, and 25 Ed. I., Cap. 1, so far as they may be relevant.

Reciting that it is impossible to secure administrative justice for poor persons in England and Wales, without legal aid.

Reciting that it is contrary to public policy, and creates agitators and communists, that rights should be granted by the constitution or by law, which are in practice withheld or denied.

And Reciting that owing to the financial difficulties of the State, to the privileges of certain subjects of the State, and the impossibility of honourably performing the obligations imposed by Magna Carta, Article 40, and 9 Henry III., Cap. 29, by unaided voluntary service, it is expedient to repeal or annul the rights as to equality in the administration of justice, thereby given.

BE IT ENACTED by the King's Most Excellent Majesty, and by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

1. *Sale of Justice.*—Justice shall not be bought by, or sold to, poor persons, except for revenue purposes.

2. *Denial or Delay of Justice.*—The provisions of Magna Carta, Art. 40, and 9 Henry III., Cap. 29, stipulating that justice shall be denied and delayed to none, shall be, and hereby are, repealed or annulled, so far only as poor persons are concerned.

3. *The Supreme Court and Criminal Courts.*—The Poor Prisoners Defence Act, 1903, and the Poor Persons Rules, shall be and hereby are repealed.

4. *Definitions in this Act.*—" Justice " includes proper professional legal advice, and civil and criminal court aid, to poor persons. " Poor Person " includes any person, who by reason of poverty, is unable to know his rights and liabilities or to take prosecute or defend ordinary civil or criminal proceedings, with the ordinary and usual facilities. Provided that if such poor person can raise a loan from a money-lender, or from some other source, he shall not be deemed to be a poor person, within the meaning of this Act.

5. This Act shall not extend to Scotland or Ireland.

6. This Act may be cited as the Poor Persons (Honesty) Bill, 1925.

APPENDIX II

REPORT ON POOR PRISONERS DEFENCE BILL, 1903, WITH APPENDICES.

THE SELECT COMMITTEE to whom the POOR PRISONERS DEFENCE BILL was referred, have agreed to the following SPECIAL REPORT :—

1. Your Committee have taken Evidence upon the subject-matter of the Bill referred to them, the following Witnesses having given evidence :—

The Solicitor-General for Scotland.
Sir Harry Poland, K.C.
Viscount Cranborne (Chairman of the East Hertfordshire Quarter Sessions).
Mr. Thomas O'Shaughnessy, K.C. (of the Irish Bar).
Mr. H. B. Simpson (Principal Clerk in the Criminal Department of the Home Office).
Mr. H. C. Buszard, K.C. (Recorder of Leicester).
The Hon. Mr. Justice Grantham.
The Earl of Desart, K.C.B. (Director of Public Prosecutions).

Your Committee also received a communication from the Hon. Mr. Justice Channell, during his absence on Circuit, which is printed with the Evidence.

2. In support of the principle of the Bill in its widest application it was urged :

(1) That in criminal matters, where the prosecution is conducted by experienced solicitors and counsel, it is contrary to the ordinary requirements of justice that no legal advice should be given to the prisoner.

(2) That a prisoner who is without means ought to be in no worse position to establish his innocence than a prisoner who is able to pay for legal assistance, and that the assistance of solicitor and counsel is of great importance for this purpose.

(3) That although it is the business of the Judge to see that the prisoner's defence is fully developed and, with that object in view, to cross-examine the witnesses for the prosecution or to re-examine the witnesses for the defence, including the prisoner, if he gives evidence and is cross-examined, yet the Judge is not in a position to do this as effectively as counsel properly instructed, because he has had no opportunity of communicating with the prisoner and ascertaining the details of his defence, nor has he usually sufficient materials for the cross-examination of the witnesses for the prosecution. Furthermore, that, especially in

the case of Chairmen of Quarter Sessions who are not lawyers, the difficulty of their task is greatly increased in the absence of legal assistance for the defence.

(4) That in Scotland the widest application of these principles had been in successful operation for many years.

3. Most of the witnesses agreed as to the importance of these considerations, but some objected to the wide application which is given to them in Scotland on the grounds—

(1) That cases of conviction of innocent men are very rare, and that substantial justice is done under the present system.

(2) That the number of cases to be tried, especially in London, is so great that it would be impossible to dispose of them in the time available if a much larger number were defended by counsel, without a large increase of the present judicial machinery.

(3) That nearly 40 per cent. of prisoners tried plead guilty under the present system, and that it would not be worth while to tempt them with the offer of solicitor and counsel to try for the chance of an acquittal. The last consideration was thought to be of considerable force by your Committee, and they recommend that the operation of the Bill should be limited to cases in which, having regard to the nature of the defence raised by a prisoner, it appears to be desirable in the interests of justice that he should have legal aid.

4. As to the stage at which such an order should be made, your Committee recommend that the committing justices should be empowered to give a certificate for legal aid for the defence, as they now do in certain cases where they consider the prosecution ought to have legal aid. The Justices would have to make some inquiry as to the means of the accused, and also to consider whether, having regard to the nature of the defence, legal aid was desirable.

5. Your Committee also recommend that the Judge or Chairman at the trial should have the same power, but they contemplate that this power would rarely require to be exercised at the trial, as the matter would have been previously considered by the Justices.

6. The above recommendations substantially met with the approval of all the witnesses who appeared before your Committee.

7. Evidence was given to the effect that it is a matter of great importance that solicitor as well as counsel should be assigned to the prisoner, because *the basis of an effective defence generally involves preliminary communication with the accused, obtaining of evidence for the defence, and inquiry into the case for the prosecution.* In Scotland the Writers to the Signet and Society of Solicitors or local societies perform the duty of appointing "agents for the poor" in the various districts of Scotland. The Incorporated Law Society were communicated with, but they did not show any willingness to assist in the matter. Your Committee came to the conclusion that in the absence of

such assistance it would be impossible to secure the voluntary help of sufficient solicitors throughout the country to work the provisions of the Bill. Furthermore, it was strongly urged by several witnesses that *the assistance of any but competent and experienced solicitors and counsel was worse than useless, and that they should be remunerated at the public expense.*

8. Having regard to these considerations, *your Committee recommend that both solicitors and counsel should be instructed in such cases, and should be paid for their services.* The Statute 30 & 31 Vict., c. 35, s. 3, recites that, "Complaint is frequently made by persons charged with indictable offences, upon their trial, that they are unable by reason of poverty to call witnesses on their behalf, and that injustice is thereby occasioned to them, and it is expedient to remove as far as practicable all just ground for such complaint," and that Statute provides for the calling of such witnesses before the Justices, and that their expenses then and subsequently "shall be allowed and paid as part of the expenses of the prosecution," out of public funds, whether such prosecution be public or private. Your Committee recommend that the expenses of the defence, including the cost of solicitor and counsel, the cost of a copy of the depositions and the expenses of any further witnesses required for the defence in addition to those called before the Justices, should be allowed and paid in the same way.

9. It was in evidence before your Committee that in Ireland the practice already exists of assigning both solicitor and counsel for the defence of a poor prisoner in certain cases, and of paying the expenses of the defence out of public funds. Having regard to this, and to the fact that neither solicitors nor the Bar in Ireland think it desirable to make any change in the existing law, your Committee recommend that the provisions of the Bill should not be extended to Ireland.

No. 1.

MEMORANDUM prepared by the SOLICITOR-GENERAL FOR SCOTLAND.

LEGAL ASSISTANCE TO POOR PRISONERS.

In Scotland provision is made by law for supplying legal assistance both in civil and criminal cases, whether in the Supreme Courts or the Sheriff Court, to such persons as (though not legally paupers) are unable from want of means to employ and pay for Counsel or Agents on the ordinary terms.

IN CRIMINAL CASES.

The Bar each year appoint so many junior Counsel to act as Counsel for the poor. There are always more willing to act than are required, and the rule is to ask those who wish to act to send in their names, and from those who do so the required number are chosen according to seniority.

In Edinburgh the W.S. Society and the Society of Solicitors before the Supreme Courts appoint so many of their members to act as agents for the poor.

Similarly the law agents who are in practice in the several Sheriff Courts appoint so many of their number to act as agents for the poor in their respective Sheriff Courts, or for those in their district who may be brought before the Justiciary Court and ask the help of the agents for the poor.

In what follows I refer only to *criminal* cases brought before the Justiciary Court—being the Supreme Criminal Court—and which tries cases either in Edinburgh or in circuit or other towns in Scotland.

In all cases the Lord Advocate is the prosecutor—though he seldom conducts a trial personally, being generally represented by Crown Counsel.

In practice any accused who claims the assistance of the Counsel or agents for the poor gets it without any inquiry into his pecuniary circumstances. But I have no reason to think that those who have means do apply for such assistance. No fees are paid to Counsel for the poor, and no charges for precognoscing, *i.e.*, taking the proofs of witnesses, or making copies of papers for Counsel or other agency work, can be exacted by agents for the poor as a condition of conducting the defence. It is the rule of the Bar that if a junior who is acting in any case as Counsel for the poor asks a senior to act as senior at the trial, the latter does so without fee, and gives personal attendance. Of course, if the senior is otherwise engaged for the day of trial the junior arranges to get some other senior who can attend. When such a request is made, senior Counsel consider it their duty if at all possible to comply with the request.

The poor agent would not be bound to incur the expense of securing expert evidence for the defence. But practically I have not known of any instance where, when such evidence was required, it has not been procured (and I have no doubt gratuitously), if the accused or his friends really could not provide any money to pay for it. Generally speaking, such expert evidence is that of medical men. In certain cases the Crown actually pay for the skilled witnesses for the defence—*e.g.*, if insanity is pleaded in Bar of trial it is quite usual for the Crown to bring the Crown doctors, and to make them available as the witnesses in support of the prisoner's plea although they are cited and paid by the Crown.

Ordinary witnesses necessary for the defence the agent for the poor would require to have in attendance at the trial.

If this involved travelling expenses, at least of any considerable amount, the usual course is for the accused's agent to explain the position to the Crown Agent, and Crown Counsel as a rule add the witnesses for the defence to the list of Crown witnesses, which secures that they are

cited and paid for at the expense of the Crown. I cannot recall any case where such a request has been refused by Crown Counsel.

If at any circuit none of the Counsel for the poor are present, the practice is for the Court there and then to appoint some of the other Counsel present to defend the accused, or if no Counsel are in attendance, to appoint the Sheriff or the resident Sheriff Substitute to do so.

No. 2.

Paper handed in by the Chairman.

REPORT BY THE GENERAL COUNCIL OF THE BAR ON THE POOR PRISONERS DEFENCE BILL.

The Council are of opinion that it is desirable in the interests of justice that every prisoner committed for trial at Quarter Sessions or Assizes (1) Should be furnished without charge, and as soon as possible after commitment, if he so desires, with a copy of the Depositions and any exhibit thereto, and (2) Should have, if he desire it, professional assistance at his trial, and reasonable means afforded him of bringing his witnesses to Court, although he may not be able to pay for either of these advantages.

27th April, 1903.

No. 3.

Paper handed in by Sir Harry Poland, K.C.

CENTRAL CRIMINAL COURT.

Session. 1902 :	*Committed Number of Persons for Trial.*	*Pleaded Guilty.*	*Tried and Acquitted.*	*Bills Ignored.*	*Prisoners Tried and Convicted.*
13th January ...	82	22	11	4	45
10th February ...	63	29	20	1	13
10th March ...	85	37	12	4	32
7th April	78	28	11	3	36
5th May	90	29	26	1	34
2nd June ...	86	28	14	—	44
30th June ...	43	21	11	—	11
21st July ...	53	20	5	1	27
9th September ...	143	53	25	1	64
30th October ...	116	42	19	3	52
17th November ...	74	34	24	1	15
15th December ...	88	41	10	1	36
Total ...	1,001	384	188	20	409

APPENDIX III

REPORT OF COMMITTEE TO ENQUIRE INTO POOR PERSONS RULES, 1919.

Order 16, RR. 22–31.

(RULES OF SUPREME COURT, 1883.)

Presented to Parliament by Command of His Majesty.

TERMS OF REFERENCE.

"To enquire into and report to the Lord Chancellor on the administration of the Poor Persons Rules and to make such recommendations to his Lordship as may appear to the Committee to be desirable and practical for the efficient working of such a system as is aimed at in those Rules."

REPORT.

MY LORD,

We now beg to submit our Report upon the matters referred to us for enquiry.

1. We have held Thirteen Sittings. The witnesses whose names and descriptions are given in Appendix I have appeared before us and given evidence.

We have also had reports from the eighty-nine Prescribed Officers in the country.

2. At an early stage of our enquiry it became evident that but for the huge influx of Matrimonial cases there would have been little, if anything, to complain of in the working of the Rules. It is, therefore, natural that our main attention has been directed to the evils which have arisen in connection with Matrimonial cases and the proper method of remedying such evils.

3. It will be seen that where statistics are referred to in this Report they are confined to the year 1918. We have investigated the statistics for the whole period during which the Rules have been in operation, but have come to the conclusion that it would needlessly incumber our Report if we were to include the statistics relating to the earlier years. At the commencement of the year 1918 the Rules had been in operation for over three years, and we think that the figures for the year 1918 can be relied upon as a fair criterion of the minimum number of cases which may be expected in the future unless some alteration in the Rules takes place.

I. THE ADMINISTRATION OF THE RULES IN ALL CASES OTHER THAN MATRIMONIAL CASES.

4. The following table shows the number of applications in the year 1918 in cases other than Matrimonial cases.

Court.	Applications.			
	Made.	Granted.	Pending at commencement of year.	Pending at end of year.
Court of Appeal	5	1	1	1
Chancery ...	112	19	52	48
King's Bench ...	193	58	49	48
Total ...	310	78	102	97

5. The evidence before us is conclusive that the Rules have worked satisfactorily in all these cases and that there has been no difficulty in finding solicitors and barristers to undertake them. We think, however, that in several respects, the Rules applicable to these cases might be improved. We propose to indicate these improvements after we have dealt with the serious position created by the glut of Matrimonial cases.

II. ADMINISTRATION OF THE RULES IN MATRIMONIAL CASES.

6. The following table shows the number of applications in Matrimonial cases in the year 1918 :—

Applications.			
Made.	Granted.	Pending.	
		At commencement of year.	At end of year.
4,101	2,215	924	1,357

These figures are sufficiently startling. It is perhaps unnnecessary to enquire into the cause for this great demand for divorce by Poor

Persons. It is, no doubt, attributable partly to the War and partly to the fact that wide attention has been called to the possibility of obtaining cheap divorces. We do not see any likelihood of any substantial reduction in the near future; we have, therefore, had to face the problem how these cases should be dealt with.

From the foregoing table it will be seen that roughly one-half only of the applications have been granted. The evidence shows that the bulk of the applications which have been refused have been refused on the ground of want of merits.

7. The following table shows the number of Matrimonial cases dealt with in the year 1918 as compared with the applications granted during the same period.

Applications.	*Petitions.*	*Cases.*	*Successful.*
2,215	1,014	486	471

Of the 2,215 applications granted, 2,120 were applications by proposed Petitioners. It will, therefore, be seen that *only in less than one-half of the cases in which applications were granted have petitions been entered and more than half of these have not proceeded to trial.*

It is, of course, obvious that in a certain proportion of the applications granted in 1918 petitions will be entered and cases tried in 1919; on the other hand the petitions entered and cases tried in 1918 include those in respect of which applications were granted in 1917, and from our investigations we are satisfied that the above table fairly accurately reflects the proportion of applications granted to petitions entered and cases tried.

8. We have carefully investigated the reasons for this great discrepancy and *have found that it is mainly due to the Poor Person being unable to find the necessary out-of-pocket expenses to enable them to start or proceed with their cases.*

All Matrimonial cases must be brought to trial and must be tried with witnesses. Cases other than Matrimonial cases may be, and frequently are, amicably settled and often depend upon documents not requiring the attendance of witnesses, and therefore do not involve an expensive trial.

9. *The out-of-pocket expenses in an ordinary Matrimonial case under the Poor Persons Rules amount on an average to about* £10 (*made up of actual out-of-pocket expenses—*£5 *chiefly travelling expenses of witnesses, and office expenses* £5). The amount, of course, varies with the number of the witnesses and the distances from which they have to come.

The out-of-pocket expenses of a nullity case under the Poor Persons Rules amount on an average to about £25. The increase in cost is due

to the doctors' fees for the medical examination which is necessary in these cases.

10. *The conclusion to be drawn from these facts is that it is futile for a Poor Person to attempt under present conditions to get a Divorce unless such person is prepared to find at least £10 in an ordinary case and £25 in a nullity case.*

It is only waste of time and labour to have cases reported upon and applications granted if, after this has been done, the cases cannot be started or have to be dropped for want of cash for the necessary expenses.

Moreover, we do not consider it right to encourage a Poor Person to find a small sum and, after that has been expended, to tell the Poor Person that the case cannot go on unless a further sum is found, which, in many cases, is quite beyond his or her means.

Unless a fund is constituted out of which the expenses of the Poor Persons can be defrayed, the really poor or quite destitute persons have no chance of availing themselves of the Rules to obtain a divorce.

11. In these circumstances we consider that it is only fair to all persons desirous of availing themselves of the Poor Persons Rules in Matrimonial cases and to those solicitors and barristers who are asked to devote their time and attention to these cases that the Poor Persons should be told at the outset that an ordinary divorce case will cost at least £10 (or, if the charge for "office expenses" is prohibited, £5), and if a nullity case £25 (or, if the charge for office expenses is prohibited, £20), and should be required to deposit such sum with the Secretary to the Prescribed Officers on making the application. The sum so deposited should be paid into Court by the Secretary to the Prescribed Officers and be utilized for the payment of the necessary expenses of the case if it is reported on favourably and the applicant is admitted to take or defend or be a party to the proceedings. If the Report is unfavourable on the ground of want of merits, the sum deposited (less any expenses properly incurred) should as a matter of right be returned to the Poor Person; but if the Report shows that the applicant has mis-stated his or her means the Judge shall have discretionary power to declare the deposit (less any expenses) in whole or part forfeited for the benefit of the Treasury.

12. This leads us to the question whether advantage has been taken of the Rules by persons who could have afforded to pay the ordinary costs of the proceedings.

Several of the witnesses have stated that they are convinced that the Rules have frequently been misused in this respect, and this view is supported by the fact that in nearly every case in which the King's Proctor has successfully intervened he has been able to recover his costs against the so-called Poor Person. The intervention of the King's Proctor in Poor Persons' cases, however, has not been frequent. The

following table shows the number of cases in which the King's Proctor has intervened in 1918 :—

Decrees.		Interventions pending at end of year.	Total.
Rescinded.	Made Absolute.		
8	1	3	12

13. We have ascertained that there has been considerable laxity on the part of many of the reporting solicitors in enquiring into the means of the Poor Persons. In none of the cases has the Poor Person been asked to make an affidavit as to means, and in many cases the Poor Person has not been personally interviewed.

The wording of the Rules as to means lends itself to misconstruction and evasion. A person can often truly state that he is not worth £50, although he is earning a considerable weekly wage, and is well able to pay the ordinary costs of divorce proceedings.

14. In order to meet this abuse we recommend that the Rules should provide for an income test as well as for the present capital test. Of course an applicant without children, earning say £2 a week, is far better off than an applicant with the same wage who has a family to support; notwithstanding this factor, however, we have come to the conclusion that the Poor Person, before being admitted to take or defend or be a party to proceedings, ought to satisfy the Court not only as at present :—

(*a*) That the applicant is not worth £50 (excluding wearing apparel and tools, etc.) or such larger sum not exceeding £100 *as a Judge personally under special circumstances may direct,*

but also

(*b*) That the applicant's usual income and earnings from all sources does not exceed £2 a week or such larger sum not exceeding £4 a week *as a Judge personally under special circumstances may direct;*

and in matrimonial suits, in which the wife is applying to sue or defend as a Poor Person, we recommend that the capital and income test be the combined capital and income of the husband and wife, and accordingly, that in such cases the applicant ought to satisfy the Court :—

(*c*) That the applicant and her husband are not worth £50 (excluding wearing apparel and tools, etc.) or such larger sum not exceeding

£100 as a Judge personally under special circumstances may direct ;

and

(*d*) That the usual income and earnings from all sources of the applicant and her husband do not exceed £2 a week or such larger sum not exceeding £4 a week as a Judge personally under special circumstances may direct ;

because the wife, whether Petitioner or Respondent, is entitled to apply to the Court and obtain an order for the payment of her taxed costs up to the setting down, and security for the estimated further costs of the trial, and such order can be enforced by Attachment.

We have in Appendix II set out a suggested new application form embodying the proposed test as to means.

15. We further recommend that a provision be inserted in the Rules that in Matrimonial cases the reporting solicitor should require the applicant to swear to his or her means. In Appendix III we have set out a suggested form of affidavit or statutory declaration as to means, which we recommend should be obligatory in Matrimonial cases ; the form should be provided to the reporting solicitor by the Secretary to the Prescribed Officers when sending the papers for report. No fee should be charged for taking such affidavit or declaration. It will be seen from the suggested form that the applicant is required to state what dependants he has. This would enable the Judge to exercise his discretion in cases where the income exceeds £2 a week and is under £4 a week.

16. The reporting solicitor should have power to administer the oath so as to save trouble and expense, and the applicant should in every case be warned by the reporting solicitor that any false statement as to means would, besides rendering the applicant liable to prosecution for perjury, render the deposit liable to forfeiture.

17. It sometimes occurs that the conducting solicitor finds out that the Poor Person has understated his or her means, and we recommend that the Rules should expressly oblige the conducting solicitor to report at once to the Prescribed Officers on discovery that the Poor Person is possessed of means beyond those disclosed by him or her to the reporting solicitor.

18. Several instances have been drawn to our attention in which considerable delay has taken place on the part of the conducting solicitors in prosecuting the Poor Persons' cases assigned to them. We therefore recommend that every conducting solicitor should be required to send a report (in a form to be prescribed) annually to the Prescribed Officers of the progress or result of all cases assigned to him for conduct. This would enable the Prescribed Officers to keep in touch with the cases and to enquire into any delay.

19. The next question which has engaged our attention is the dearth of barristers and solicitors willing to undertake the duty of acting in these cases.

20. We propose first to deal with the solicitors.

There has undoubtedly been great difficulty in finding the requisite number of solicitors to deal with the very large number of Matrimonial cases which have arisen.

The reluctance of solicitors of standing to undertake the duty of reporting upon and conducting these cases is due not only to the amount of work involved, but also to the distasteful nature of the work.

The work is special, and ordinarily undertaken by a limited class of solicitors only. Many firms never undertake Matrimonial cases and would not undertake them even for their own clients, much less are they inclined to undertake them gratuitously for other persons.

We have ascertained that there are at least 68 solicitors in London who, during 1918, undertook Poor Persons' Matrimonial cases, and 790 solicitors in London who, during 1918, undertook Matrimonial cases in the usual way for their own clients, or as agents for their country principals, but who have not hitherto undertaken Poor Persons' Matrimonial cases. Some of these latter solicitors have a considerable practice in Divorce.

21. Under the present system of legal administration the bulk of the work of conducting Matrimonial cases has to be done in London, although the majority of the cases to be dealt with are country cases.

The following table shows the proportion of country cases to London cases for the year 1918 :—

Applications.				Applications Pending.			
Made.		Granted.		At commencement of year.		At end of year.	
London.	Country.	London.	Country.	London.	Country.	London.	Country.
1,150	2,951	596	1,619	249	675	364	993

It would have involved too much labour in an already heavily-worked department to have ascertained the proportion of London to country petitions filed and cases tried, but we think that we are safe in assuming that the proportion shown in the above table would be reflected in the number of petitions entered and cases tried—namely, one-third London and two-thirds country.

The burden of conducting both London and country Matrimonial cases falls on the London solicitors.

22. The result of the London solicitors of standing having held aloof has been that there has arisen a class of solicitors who have specialized in these cases.

One of these solicitors in 1918 undertook as many as 523 cases for reporting, and another undertook as many as 401 for conducting.

23. The evidence shows that many of the Reports made by these solicitors are quite worthless, and merely consist of the written answers of the Poor Person to printed questions sent to them, without such investigations as ought to take place before a report is made. The number of cases undertaken by some of these solicitors makes it practically impossible for them to investigate the facts sufficiently to produce a reliable report.

24. A practice has sprung up amongst a number of the reporting solicitors of charging the Poor Person with a fee for reporting, ranging from 5s. upwards.

We consider that such charges are contrary to the Rules as at present framed, but, in view of the practice alluded to, we recommend that an express provision be inserted in the Rules prohibiting the charging of any fee for reporting. If out-of-pocket expenses are incurred in the reporting stage (which is a rare occurrence) we recommend that the Rules should provide that the particulars of such expenses be stated in the Report, and in cases where a deposit has been made, be paid out of the deposit on vouchers or other satisfactory evidence being produced to the Secretary to the Prescribed Officers. In cases where there is no deposit (which would include Matrimonial cases if our recommendation as to a deposit is not adopted) the reporting solicitor should, before incurring any out-of-pocket expenses, send particulars of such expenses to the Secretary to the Prescribed Officers and request him in writing to obtain the amount from the Poor Person. The Secretary to the Prescribed Officers should thereupon endeavour to obtain from the Poor Person a sum of money sufficient to cover the out-of-pocket expenses and, if obtained, pay the same into Court and send to the reporting solicitor a sealed acknowledgment by the Paymaster-General of the payment in. The reporting solicitor should then proceed to make his report, stating therein the particulars of his actual out-of-pocket expenses and these should be paid to him out of the money in Court on the direction of the Secretary to the Prescribed Officers, who should first satisfy himself by voucher or other evidence that they are properly payable.

25. Further, we recommend that the Rules should provide that in all cases the reporting solicitor should personally see the applicant, unless there is some sufficient reason (*e.g.*, absence abroad or illness) and that when the reporting solicitor has not seen the applicant he should

state that fact and the reason for not having seen the applicant in his report.

26. We also recommend that in every case the report should be open to inspection by the King's Proctor. We consider that a Poor Person availing himself of privileges at the public expense ought to be absolutely candid.

27. As regards the conducting solicitor, we recommend that it be made obligatory that a barrister should be employed to draw the Petition or Answer, and that in every case the proofs of the witnesses be furnished to such barrister with the instructions. The Petition or Answer should in every case be signed by the barrister who has settled it.

This procedure would obviate what frequently takes place now, *viz.*, that a barrister is briefed and finds that the proofs, which have only been obtained at the last moment, are wholly insufficient to bear out the allegations in the pleading, with the result that the trial has either to be adjourned for further evidence (with the attendant delay and expense) or the case is then for the first time shown to be one which ought not to have been brought or defended.

28. A practice has sprung up amongst the conducting solicitors of demanding (as a first step, after they have been assigned) a sum of money from the Poor Person to cover out-of-pocket and "office expenses."

The Taxing Officers in the Probate and Divorce Division allow a sum for "office expenses," in addition to actual out-of-pocket expenses with the result that some of the solicitors who now undertake a large number of these cases have engaged special clerks for this purpose, and carry on a remunerative practice in Poor Persons' cases.

If the money demanded from the Poor Persons is not forthcoming, nothing is done; if the money is sent, the case is proceeded with until, in the opinion of the solicitor, it is exhausted by out-of-pocket and "office expenses." When this occurs more money is asked for; if it is not forthcoming, the case stops; if more is sent, the case proceeds as before.

In some cases the money has been received and nothing has been done, but these cases are exceptional, and have been dealt with by the Disciplinary Committee of the Law Society and the Court.

29. We have come to the conclusion that it would be far better, and we accordingly recommend, that both the reporting and the conducting solicitor should be prohibited from receiving any money from the Poor Person, and that all money to cover necessary out-of-pocket expenses should be paid by the Poor Person to the Secretary to the Prescribed Officers, and be deposited in Court in the first instance. The Secretary should obtain an acknowledgment in duplicate of such deposit from the Paymaster-General's Department, and should send one of such acknowledgments to the conducting solicitor with the instructions. The

existing regulations for auditing the accounts of accounting officers will, we consider, apply to the Secretary to the Prescribed Officers. The money received by the Secretary from the Poor Persons should be deposited in Court on the day that it is received, or at the latest on the following morning, or as regards money received too late for deposit on a Saturday, on the following Monday morning.

30. If our recommendation that a deposit be made with the application is carried into effect the deposit so made would be available for out-of-pocket expenses. We have already in paragraph 24 indicated the procedure which we consider should be adopted by the reporting solicitor if our recommendation as to a deposit is not adopted, and generally in all cases where there is no deposit. We recommend that a similar procedure be adopted in the case of the conducting solicitor, who should send a written request to the Secretary to the Prescribed Officers stating the amount required for out-of-pocket expenses. The Secretary should then endeavour to obtain the necessary amount from the Poor Person and pay it into Court. Both in cases where a deposit has been made with the application and in cases where a deposit has been made subsequently on the request of the conducting solicitor, the conducting solicitor should apply to the Secretary to the Prescribed Officers for payment of any money required for out-of-pocket expenses and the Secretary should satisfy himself that the amount required is proper before directing payment out to the solicitor.

31. In case the original deposit or the original amount required by the conducting solicitor proves insufficient for the out-of-pocket expenses, any further money should, at the written request of the conducting solicitor, be applied for by the Secretary to the Prescribed Officers, and, if obtained, be deposited in Court. If the recommendations we have made in the last preceding paragraph and in this paragraph are adopted, it would, we think, enable the Poor Persons' Department to retain complete control over the out-of-pocket expenses of the conducting solicitor.

32. We have ascertained from the Paymaster-General's Department that there would be no difficulty in formulating a scheme which would work simply and inexpensively with respect to the suggested payment into and out of that Department of sums deposited on behalf of applicants—

(1) as regards payment into Court, the necessary authority to enable the Paymaster-General's Department to act upon the signature of the Secretary to the Prescribed Officers could, we submit, be given by a new rule, to be numbered 34a, which should follow the present Rule 34 of the Supreme Court Funds Rules, in the following terms :—

> " In cases of funds to be lodged under the Rules of the " Supreme Court (Poor Persons), 1919, the request shall be " signed by the Secretary to the Prescribed Officers under those

" Rules, and the money shall be placed in the books at the Pay " Office to the credit of ' *Re* the Rules of the Supreme Court " (Poor Persons), 1919,' and ' *Re* the application of (the Poor " Person concerned).' "

(2) As regards payment out of Court, Rule 45 (1) of the Supreme Court Funds Rules is as follows :—

" Directions of the Court in writing under the signature of a " Master shall be sufficient authority to deal with sums of " Principal Money or Annual Income not exceeding £10 in " amount."

And we submit that the following addition to this rule would enable the Paymaster General's Department to deal in the manner we propose with all sums deposited under the Poor Persons Rules :—

" and in cases of money lodged under the Rules of the " Supreme Court (Poor Persons), 1919, the directions in " writing of the Secretary to the Prescribed Officers under " those Rules shall be sufficient authority to the Paymaster- " General to deal with sums not exceeding £25 in amount, " and shall be treated as equivalent to an Order."

If this addition were made, the conducting solicitor or his clerk would be able readily to draw out any money required by him on a written direction signed by the Secretary to the Prescribed Officers.

All Court fees for payment into or out of Court and for obtaining a duplicate acknowledgment for payment in should be remitted.

We have been informed by Mr. Constable, an experienced official in the Paymaster-General's Department, that in his opinion no increase of staff would be required to work the suggested new rules.

33. *The question whether any allowance ought to be made for " office expenses " is more difficult.*

If no such allowance is made it may result in nobody being found willing to undertake these cases. On the other hand it is contrary to the spirit if not to the letter of the Rules as at present framed, that any profit should be made by the solicitor undertaking these cases.

34. So long as the present system continues and such a vast amount of useless work has to be done, there is little prospect of obtaining solicitors of good standing to undertake the onerous duties entailed, but we consider that if a stricter administration of the Rules as to means were to be adopted, and *if our recommendation that Poor Persons should be required to make deposits is accepted, it would result in considerably reducing the number of cases and thus substantially lessening the work required to be done.*

35. We have reason to believe that if the Permanent Secretary to the Lord Chancellor were to send a copy of any revised Rules to the Presi-

dents of the London and Provincial Law Societies inviting the co-operation of these Societies in carrying out the new Rules, the response would be satisfactory and that a sufficiency of both reporting and conducting solicitors would be found to undertake the work on the revised lines, even though no charge for "office expenses" were permitted.

If this course were adopted, both the London and the Provincial Law Societies would, we are informed, upon the next occasion of their Annual and Provincial Meetings make a point of bringing the new Rules before the profession and inviting their members to take a proportionate part of Poor Persons' cases.

36. We have carefully considered the question whether charges for stationery and copying done in the solicitor's office should be allowed, but have come to the conclusion that no such charges should be permitted, as such charges open the door to making profit charges. We therefore recommend that the Rules should expressly provide that no charge whatever for "office expenses" should be permitted.

37. We recognize, however, that a difficulty may occur in dealing with cases during the transition stages as it is impossible to secure the co-operation of the Law Societies until the new Rules are definitely settled and published. To meet this difficulty, we recommend that the new Rules should be made to come into operation at some future date to be fixed in the Rules and that during the interval of the passing of the Rules and their coming into operation the Law Societies should be invited to assist as above-mentioned.

38. *If a fund were established to provide for the expenses of Poor Persons' cases, a wholly different state of things would arise and the number of applications as well as of cases entered and tried would no doubt increase enormously.*

It would, in our opinion, be essential in that case to give some profit costs which in turn would probably lead to speculative solicitors hunting up cases.

39. Dealing next with barristers.

One of the results of the allowance to conducting solicitors of profit costs under the guise of "office expenses" has been to cause a reluctance amongst members of the Bar to do the work gratuitously, the argument being that if the solicitor is allowed to make a small profit the barrister ought also to get a small fee. This feeling would be entirely removed if solicitors were prohibited from charging "office expenses."

The recommendation as to barristers being properly instructed at the outset would, we think, tend to make barristers practising in the Divorce Division less reluctant to undertake Poor Persons' cases.

A personal request by the President of the Admiralty, Probate and Divorce Division, would, no doubt, have great effect in the direction of procuring all necessary assistance from the Bar.

III. LEGAL ADMINISTRATION IN MATRIMONIAL CASES OUTSIDE THE RULES.

40. A subject matter closely connected with the administration of the present Rules in Matrimonial cases is the system under which all Matrimonial cases have to be conducted in London.

This subject does not come directly within the scope of our reference, but possibly we ought to allude to it.

41. The expense of Matrimonial proceedings is in the majority of cases made larger and often prohibitive by the parties and witnesses having to come up to London from a distance. At the same time a heavy burden is thrown upon London solicitors. In country cases the country solicitors must have London agents, who have to do the whole work of conducting.

42. A system whereby every Matrimonial case originating in the country could be conducted and tried locally would, to some extent, meet the difficulty of the expenses and would avoid the whole burden of conducting falling on London solicitors. We have already shown the large proportion of Poor Persons' cases which come from the country.

43. Three methods of providing for local conduct and trial of Matrimonial cases have been brought to our attention, *viz.* :—

(1) Giving the County Courts jurisdiction in Divorce.
(2) The trial of Divorce cases at Assizes with Divorce Registries in the District Registries.
(3) A special Divorce Assize with local Divorce Registries.

44. In our opinion the first method would not be desirable. Our main reasons for coming to this conclusion are as follows :—

The issues involved are undoubtedly serious and the consequential results involve not only the status of the parties themselves but also seriously affect their children.

Uniformity of decision is essential in matters involving such grave issues, and this can, we think, only be obtained by keeping the decisions in the hands of as few Judges as possible. Even Judges of the High Court have differed substantially in their views as to what does or does not prove certain issues often involved in Matrimonial cases (*e.g.*, cruelty), and if these issues had to be tried in County Courts, no doubt the divergence would become much accentuated. This reasoning applies equally to the many cases in which the divorce Judge has to exercise his discretion.

If Matrimonial cases were tried in County Courts, collusion would, we feel sure, become much more common, with the result that many decrees would be obtained contrary to the true legal rights of the parties. The suppression of collusion depends very largely upon practitioners and their sense of responsibility to the Court as opposed to the wishes of

their clients. Collusion is very difficult for Judges to detect and an intervention by the King's Proctor on the ground of collusion is almost unknown.

Questions of the custody of, access to, and maintenance for children involve inquiries foreign to County Courts. Moreover, these matters frequently arise at long intervals after decree absolute and as they should only be dealt with by the Court in which the decree was obtained, no saving of expense would result if any change in the residence of the parties had occurred. Further, if subject to appeal, it would involve expense to the parties greater than if conducted in the High Court.

The suggestion that a decree should only be pronounced in the County Court in the district in which the last matrimonial residence was, would often cause considerable expense to the Petitioner, as the Petitioner (*e.g.*, a wife who had been deserted for two years) might very likely be living in a different district at the time proceedings were instituted and probably the witnesses who prove adultery would have to come from a considerable distance ; there would also be many cases in which the last matrimonial home was out of England (*e.g.*, soldiers on duty abroad).

To make County Courts effective from the point of view of saving expense to the Petitioner it would, we think, be necessary to give the Petitioner his choice of which Court he would start proceedings in. If such choice were given, then directly it was found that one particular County Court Judge was inclined to exercise his discretion in favour of an erring Petitioner or to require very little proof of certain matters, such cases would be commenced there.

If jurisdiction in Divorce were given to County Courts it would be necessary to appoint and pay an official shorthand writer for each Court.

Further, we consider that on County Court Circuits in which the Judge is competent to deal with all cases within his jurisdiction, the time of the Court is fully occupied, and an extension of jurisdiction to include Matrimonial cases would seriously interfere with the ordinary work of the Court.

No appeal lies from the findings of fact in a County Court and we think that local juries from the district in which the parties are known would be a most undesirable tribunal to find facts in Matrimonial cases.

The interlocutory proceedings would in many instances be heard by local practitioners (many Registrars being in private practice). This would, no doubt, lead to publicity of the proceedings in the locality prior to the hearing which would be most undesirable. In our opinion only officials of the Court should deal with Matrimonial cases in their preliminary stages.

45. In our opinion either the second or the third method of providing for local conduct and trial of Poor Persons' Matrimonial cases would tend to alleviate the congestion of Divorce work in London and would be unexceptional if it could be carried out.

There are, no doubt, difficulties in adopting either of these courses,

but they ought not, we think, to be insuperable. The expenses would not in all cases be reduced, as witnesses often have to come from a different locality to that in which the Petitioner resides, but in many cases there would be a considerable reduction in cost. More country solicitors would have to give their services than at present, and the London solicitors would correspondingly be relieved from their present burden.

We have ascertained that there are on the lists, kept by the Prescribed Officers, 64 country solicitors who are willing to have Matrimonial cases assigned to them for conduct and that many of the total number of 1,280 reporting solicitors on the lists are willing to do Agency work in Divorce, but the local District Registrar usually nominates a solicitor in local cases if asked to do so.

We have some reason for believing that a sufficient number of country solicitors willing to undertake the conduct of Poor Persons' Matrimonial cases would be forthcoming if the recommendations we have made were adopted and carried into effect.

If a Divorce Assize is instituted, Centres would have to be carefully selected for that purpose ; the cost and inconvenience to the place of Assize would also be a factor requiring careful consideration.

46. If the present system is retained we recommend—

(1) That a special day should be set apart for Poor Persons' Matrimonial cases so as to obviate the expense of the parties and witnesses waiting whilst the ordinary cases are taken.

(2) That not more cases should be placed in the paper for the day than can certainly be finished, so as to obviate the expense to the parties and witnesses of having to stay in London or return to the Courts.

(3) That if a conducting solicitor has more than one case ready for trial his cases should, at his request, be taken consecutively, so as to avoid inconvenience and loss of time to the solicitor giving gratuitous service.

IV. IMPROVEMENTS WHICH MIGHT BE INTRODUCED INTO THE RULES GENERALLY.

47. Our investigations into the working of the Rules in Matrimonial cases have led us to make a number of recommendations for the amendment of the Rules, many of which could be advantageously adopted for cases other than Matrimonial cases. It would, we think, serve no useful purpose if we were to set out at length our reasons for coming to this conclusion, as they are evident from what appears earlier in this Report ; we have, therefore, contented ourselves in referring to them in the Summary of Recommendations which will be found at the end of this Report.

48. The two following recommendations on minor matters, however, should be mentioned, as they are not previously alluded to, *viz.* : (1) that n the Chancery and King's Bench Divisions the Senior Master should

be requested to arrange so far as possible that the Master who admitted the applicant to take, or defend, or be a party to, proceedings should not afterwards deal with the case when it comes to be litigated (in the Divorce Division this would not be possible owing to the great number of cases and to the limited number of the staff) ; and (2) that no person out of the jurisdiction should be allowed to take, or defend, or be a party to, proceedings as a Poor Person without the direction of a Judge in person.

V. AS TO ESTABLISHING AN OFFICIAL TO CONDUCT POOR PERSONS' CASES.

49. It has been impossible to make the present investigation without having had our attention prominently called to the question of establishing a Government official to deal with Poor Persons' cases.

After giving this matter our careful consideration, we have come to the conclusion that it would be most undesirable that Poor Persons' cases should be undertaken by such an official.

As regards all cases except Matrimonial cases, an official is certainly not required.

As regards Matrimonial cases, the official would in most cases have to undertake the impossible task of acting on both sides. Two officials would have to be constituted, one for Petitioners and the other for Respondents.

Except as a last resort, it would, in our opinion, be highly objectionable to create an official to conduct private litigation, and much more two officials, who would be constantly litigating against each other.

If an official or officials were established, there would be no efficient check on the question of means and the result might be that many small cases would be conducted at the expense of the country where the litigants were able to pay the ordinary costs. Moreover, if a Government Department for this purpose were once established, it would be an easy matter for the Government of the day to increase the limit as to means and thus to undertake cases which solicitors and barristers would ordinarily undertake at a reasonable profit.

In our opinion it would be far better (so long at all events as there is no public fund out of which to defray the costs of Poor Persons' litigation) *to allow the work to be done by private practitioners, who would have the greatest interest in seeing that the privileges granted to Poor Persons were not abused.*

VI. SUMMARY OF RECOMMENDATIONS ENTERED IN THIS REPORT.

1. That the Poor Persons Rules be amended by providing for the following matters, which should be made to apply to all cases coming under the Rules, *viz.* :—

(1) An income test as well as the present capital test, with a new form of application. Para. 14.

(2) The reporting solicitor to have power to administer the oath in the case of affidavits or statutory declarations required to be made by the Poor Person before he is admitted to sue or defend. Para. 16.

(3) The reporting solicitor to see the applicant personally unless the latter is ill or abroad, in which case the fact that he has not seen the applicant and the reason for not doing so to be stated in the Report. Para. 24.

(4) The conducting solicitor to report to the Prescribed Officers in the prescribed form annually as to the progress and result of cases assigned to him. Para. 18.

(5) The conducting solicitor to report to the Prescribed Officers on discovering that the Poor Person has understated his means. Para. 17.

(6) No money to be received by either the reporting or the conducting solicitor from the Poor Person direct. All money required for out-of-pocket expenses to be obtained from the Poor Person by the Secretary to the Prescribed Officers and to be paid into Court. Payment out to be made to solicitors for out-of-pocket expenses on the direction of the Secretary to the Prescribed Officers, who is to satisfy himself as to the proper amount. Paras. 29 to 31. No Court fees to be payable on payment into and out of Court. Para. 32.

(7) The reporting solicitor not to be allowed to charge a fee for reporting; particulars of any out-of-pocket expenses to be stated in the Report and to be obtained through the Secretary to the Prescribed Officers. Para. 24.

(8) No charge to be allowed to be made by the conducting solicitor for "office expenses" including stationery and copying done in the office. Para. 36.

(9) No person out of the jurisdiction to be admitted to take or defend or be a party to proceedings without the direction of a Judge in person. Para. 48.

II. That the Poor Persons' Rules be amended by providing for the following matters, which should be made to apply to Matrimonial proceedings only.

(1) Payment on application of a deposit of £5 in ordinary cases and £20 in nullity cases (or, if the "office expenses" are not abolished, £10 and £25). Para. 11.

(2) Deposits to be paid into Court and utilized for out-of-pocket expenses. Para. 11.

(3) Deposits to be returned to applicants if application not granted on the ground of want of merits. Judge to have discretion to order forfeiture of deposits if any mis-statement as to means. Para. 11.

(4) Every applicant to make an affidavit or statutory declaration as to means free of charge in the form in Appendix III, and to be warned by reporting solicitor that any mis-statement as to means will render his deposit liable to be forfeited. Paras. 15 and 16.

(5) The report to be open to inspection by the King's Proctor. Para. 26.

(6) Every Petition and Answer to be drawn by a barrister and signed by him ; such barrister to be furnished with proofs of witnesses before settling the Petition or Answer. Para. 27.

(7) Special days to be set apart for taking Poor Persons' cases, taking care not to put more in the day's list than are certain to be concluded, and if a conducting solicitor has more than one case, his cases to be placed in the list consecutively. Para. 46.

III. That the Supreme Court Funds Rules be amended so as to enable the deposits to be paid into and out of Court expeditiously and without unnecessary formality and free of expenses. Para. 32.

IV. That the Senior Master in the Chancery and King's Bench Divisions be requested to arrange that, so far as possible, the Master who has admitted the Poor Person should not deal with the case when it is litigated. Para. 48.

V. That the new Rules be made to come into operation at some future date so as to allow of sufficient time after publication for the Law Societies to obtain the necessary assistance of solicitors to carry them into effect. Para. 37.

VI. That the Permanent Secretary to the Lord Chancellor should send a copy of the new Rules directly they are published to the Presidents of the London and Provincial Law Societies inviting their co-operation. Para. 35.

VII. That the President of the Admiralty, Probate and Divorce Division be asked to make a personal request to barristers to assist in carrying out the Rules. Para. 39.

In conclusion we desire to acknowledge the services rendered by our Secretary, Mr. Philip Clark, throughout our investigations ; his industry and zeal have been of the greatest assistance to us.

(*Signed*) P. OGDEN LAWRENCE, *Chairman.*
R. F. BAYFORD.
H. MADDOCKS.
*A. H. COLEY.
*CHAS. GODDARD.

PHILIP CLARK, *Secretary.*

DATED the 29th day of OCTOBER, 1919.

ROYAL COURTS OF JUSTICE.

* We concur generally in the Recommendations contained in the Report, but we are of opinion, for the reasons stated in the following Memorandum, that a limited jurisdiction in Matrimonial cases should be conferred upon County Courts.

MEMORANDUM

By Mr. A. H. COLEY and Mr. CHARLES GODDARD.

It has long been recognized that facilities should be given for the trial of matrimonial cases locally. (*See* the Report of the Committee appointed by the then Lord Chancellor to inquire into certain matters of County Court Procedure, 19th February, 1909, and the Report of the Divorce Commission, November, 1912). The first-named Committee did, in fact, recommend that jurisdiction in such cases should be conferred upon the County Courts. The Law Society has upon more than one occasion reported in favour of this course, and we are entirely in agreement with it. In our opinion, if such jurisdiction were given, many of the difficulties referred to in the foregoing Report would be removed.

1. The County Courts already possess jurisdiction in a very large number of matters affecting the civil rights of the subject, and the tendency has been to increase their powers. There appears to be no good reason why Matrimonial cases should be excluded from the jurisdiction of these Courts. Whilst their gravity to the parties must be admitted, the trial of such cases does not seem to involve greater knowledge, care, or skill, than are needed in many of the matters that now come before the Courts. It is true that the present jurisdiction of the County Courts is limited in cases over which they have control, but it is not proposed to deal otherwise with Matrimonial cases. The jurisdiction might be limited to cases in which the joint incomes of the petitioner and respondent do not exceed £200 per annum and their joint assets do not exceed £50, and the jurisdiction should be exercised by the Judge alone, who should have power to award damages limited to £100. The preliminary proceedings should be under the control of the Registrar of the Court. The present Rules of Practice, or, if practicable, a simplification of them, should be observed.

2. If it be thought inexpedient to confer jurisdiction upon all County Courts, the necessary powers might be given to the Courts which form Centres under the County Courts Act, 1903. This Act extends the jurisdiction of the Courts to claims not exceeding £100. These Centres number 44, and comprise many of the large cities and towns. They are specified in the Schedule to the Order in Council of 12th December, 1904, and it is possible to add to their number.

3. The County Court of the district where the parties were cohabiting immediately prior to the commencement of the proceedings, or in the alternative above mentioned, the nearest centre thereto should be the place of trial. This would, we think, prevent any of the parties moving into another district where they might suppose they had a better chance of success.

4. There would, in our opinion, be less danger of collusion between the parties if the cases were tried locally. The parties would be known to

many persons, and greater publicity would be given to the matter. Any enquiries of the King's Proctor would thereby be facilitated. The King's Proctor, giving evidence before the Royal Commission on Divorce said : " I do not think there is any objection to the County Courts from the King's Proctor's point of view." (Report of Royal Commission on Divorce and Matrimonial Causes—Minutes of Evidence, Vol. II, p. 142.)

5. It is admitted that a very large part of the cost of a Matrimonial case is due to the travelling expenses of the parties and their witnesses, and to the expense of their staying in London until the case is heard. Nearly all these expenses would cease to be incurred if the cases were tried in the local County Court, and even if jurisdiction were given only to the principal Courts, as indicated in para. 2, a great saving would be effected.

6. In our opinion, if the foregoing proposals were adopted, the necessity for any special Rules as to Poor Persons would largely disappear. We believe that the parties would, when relieved from the burden of travelling expenses and the like, make a successful effort to meet the costs payable under a County Court Scale which could be adapted for the purpose. They could select their own solicitor, and, if desired, employ through him counsel of their own choice. In this way, a greater sense of responsibility on the part of the solicitor and counsel employed would, we think, be created. In order to meet the case of really poor and destitute persons, some provision might be made to relieve such persons, on satisfactory cause being shown, from payment of Court fees.

7. It is said that already there is too great pressure upon the County Courts, and that the Judges have not time for any new work. We do not think that the facts support this view. Further, the number of cases, spread over the whole country, is not very large, and as the great majority are undefended, the amount of time occupied in the trial of them would be small.

8. It has been objected that the law applicable to Matrimonial causes is of a special nature, and that there would be danger of want of uniformity in its administration if jurisdiction were conferred upon the County Courts. We do not think there is much ground for this objection. Cases would fall to be decided under the same Statutes and authorities as control the administration of the law in London, and a Judge in the County Court district, closely in touch with the occupations and modes of life of the suitors could, without doubt, be trusted to deal with such cases in a manner befitting their importance to the parties. If a new procedure had to be learned, the evidence afforded by the establishment of District Registries under the Judicature Act, and by the extension of jurisdiction in many important matters to the County Courts since their creation, shows that any such new procedure could be learned and applied with success by the officials of the Courts and the legal profession.

9. In any case coming within the limit suggested in para. 2 of this Memorandum, where the proceedings had been commenced in the High Court, we think a Registrar of the Divorce Division should have power to remit any such case for trial in the County Court as being satisfied that it would be desirable on the ground of convenience to witnesses and a saving of expense.

(*Signed*) A. H. COLEY.
CHAS. GODDARD.

Appendix I

Witnesses examined by the Committee.

Mr. John Charles Fox, Master of the Supreme Court (Chancery). Chairman of the Prescribed Officers.

Mr. Leonard W. Kershaw, King's Coroner and Crown Office Master. Prescribed Officer for the Crown Office.

Mr. George A. Bonner, Master of the Supreme Court. Prescribed Officer for the King's Bench Division.

Mr. Alfred Musgrave, Senior Probate Registrar. Prescribed Officer for the Probate and Divorce Division.

Mr. Adrian Hassard-Short, Secretary to the Prescribed Officers.

Mr. William J. Farrant, Clerk for Statistical Returns, Home Office.

Mr. W. J. Constable, of Assistant Paymaster-General's Department, Royal Courts of Justice.

Sir T. Willes Chitty, Master of the Supreme Court (King's Bench Division).

Mr. Harold Moore, Senior Clerk to the Senior Probate Registrar.

Mr. E. L. D. Zeffertt, Solicitor (Messrs. Zeffertt & Co.).

Mr. D. Figur, Solicitor (Messrs. Figur & Co.).

Mr. Clement E. Stredwick, Assistant King's Proctor.

Mr. T. Bucknill, Barrister.

Mr. G. C. Tyndale, Barrister.

Mr. W. Drake, Solicitor.

Mr. R. W. White, Solicitor (Messrs. Bridges, Sawtell & Co.).

APPENDIX IV

REPORT OF POOR PERSONS RULES COMMITTEE, 1925.

Presented to Parliament by Command of His Majesty.

TERMS OF REFERENCE.

To enquire into the difficulties which have arisen in the working of the Poor Persons' Rules and to consider and report to the Lord Chancellor as to the steps which should be taken whether by way of amendment of those Rules or by the substitution of a different system with a view to assisting poor persons to pursue their civil remedies in the High Court or to defend actions brought against them.

REPORT.

To

The Right Honourable the Viscount Cave, G.C.M.G.,
Lord High Chancellor of Great Britain.

My Lord,

We now beg to submit our Report upon the matters referred to us for enquiry.

1. We have held 24 sittings. The witnesses whose names and descriptions are set out in Appendix I have appeared before us and given evidence. Our sittings have been interrupted twice for short periods owing to the general elections which took place in December, 1923, and October, 1924.

2. *The difficulties which have arisen in the working of the Poor Persons' Rules have been caused solely by reason of the inability of the Poor Persons' Department to find an adequate number of solicitors willing to undertake the conduct of the large number of divorce cases brought by and against poor persons. This inability is not due to any lack of effort on the part of the Law Society or of the Poor Persons' Department. On the contrary we desire here to record our appreciation of the work that has already been done by a large number of solicitors in dealing with poor persons' cases. This work has been done under circumstances of great difficulty. It has involved a certain amount of personal expense to the solicitors and a considerable amount of disorganization of the ordinary work of their offices for which they have received no remuneration and little recognition.*

3. There has been no difficulty in finding a sufficient number of barristers to undertake the necessary Court work under the present

system, and there is no likelihood of any shortage of barristers willing to give gratuitous service arising in the future so long as solicitors also render gratuitous services. We therefore do not propose to refer again to the Bar, and in using the term "the profession" in this Report we desire it to be understood that we mean the solicitors' branch of the legal profession only. We wish to add that no unfavourable inference should be drawn as between the two branches of the profession by reason of the facts stated in this paragraph, as the work of barristers in connection with poor persons' cases is necessarily much less irksome and troublesome than that undertaken by solicitors.

4. We have in Appendix II set out in tabular form the statistics relating to poor persons' cases. Although these statistics show an increase in the number of cases of all kinds, yet the cases other than matrimonial causes are still comparatively few and no difficulty has arisen in dealing with them under the present system. As regards matrimonial causes, however, the case is different. The exceptional number of applications in divorce proceedings arising out of the War may now fairly be considered as having been exhausted. It is reasonable, therefore, to anticipate that there will be no reduction in the number of applications in the future. An average taken over the years 1922, 1923 and 1924, gives the following result for one year, *viz.* :—

2,270 applications in respect of each of which a reporter has to be found, and

1,041 cases in which a favourable report has been made and in respect of each of which a conducting solicitor and a barrister have to be found.

We are of opinion that these figures fairly represent the minimum number of divorce applications and divorce cases which will have to be dealt with in each year for the future. Roughly two-thirds of the work comes from the country and one-third from London.

5. *On the 31st December*, 1924, *there were in the Poor Persons' Department 412 divorce applications in which favourable reports had been made for which no conducting solicitors could be found.* There is no need for us to point out the seriousness of the position which has thus arisen.

6. The weak spot in the present system is that its success depends entirely upon the individual efforts of a comparatively few members of the profession, and further that the organization and distribution of the necessary work are not undertaken by the profession in its collective capacity but are in the hands of officials who are necessarily not in such close touch with solicitors as the representative bodies of the profession would be if the organization and distribution were undertaken by such bodies. The evidence adduced before us shows that the reluctance evinced by the majority of the members of the profession to undertake

the conduct of poor persons' divorce cases under the present system is attributable to the following three main causes, *viz.* :—

(1) the distasteful character of the work,
(2) the difficulty and delay in obtaining payment of out-of-pocket expenses out of the deposits in Court, and
(3) the undue burden cast upon London solicitors owing to the centralization of divorce work in London.

The real problem which has confronted us in the present enquiry is to discover some practical method of avoiding these difficulties for the future.

7. *First—The distasteful character of the work.*—This is inherent in the nature of the work itself and is rendered more acute by reason of the fact that the persons concerned are often uneducated and ignorant. Many solicitors, for various reasons, object to undertaking divorce work of any kind. Others, who have no such general objection, do not like to receive at their offices persons who are often ill-dressed and frequently ill-mannered. The provision of a room or rooms at the Law Courts or at some other place where solicitors could interview the parties and their witnesses would, to some extent, meet this objection, but it would entail loss of time and extra trouble and thus make the work more burdensome. In any event, the provision of such accommodation would not remove the main cause of the difficulty now under consideration. It is obvious that no mere Rules of Court, however framed, would overcome the reluctance on the part of solicitors caused by the distasteful character of the work.

8. *Secondly—The delay and difficulty in obtaining payment of out-of-pocket expenses out of the deposits in Court.*—The complaints on this score have been numerous and in the main well-founded. In our opinion the regulations now in force have the effect of deterring solicitors from undertaking the work. The difficulty and delay are aggravated by the large number of cases which have to be dealt with in the Registry. But this cause, although it has contributed substantially to the breakdown of the present system, does not really go to the root of the difficulty, and if removed, would not, in our opinion, bring about the success of that system.

9. *Thirdly—The undue burden cast upon London Solicitors owing to the centralization of the divorce work in London.*—In July, 1922, for the first time, provision was made for the trial of poor persons' divorce cases at the ten Assize towns mentioned in Order 36A, Rule 8. This, in addition to affording substantial relief to poor persons, also to some extent relieves London solicitors of their burden. As, however, at present all divorce cases have to be commenced and all interlocutory applications have to be dealt with in London, the relief afforded to London solicitors is comparatively trifling. In conducting divorce pro-

ceedings every country solicitor has still to employ a London agent, and thus London solicitors have practically to bear the burden of conducting poor persons' divorce cases for the whole of England and Wales, even though two-thirds of such cases come from the country. It is generally recognized that this is unfair to London solicitors and it is not to be wondered that there exists a strong and insistent demand for a more equitable distribution of the work. One remedy, which has been much stressed by a large number of solicitors of the highest standing, both in London and the country and has been advocated by the Law Society and by some of the most influential provincial law societies, is that jurisdiction in divorce should be conferred upon the County Courts. We do not, however, on the present occasion propose to go into the merits or demerits of this vexed question for the simple reason that such a remedy would involve legislation of a highly contentious nature, and that it is at least doubtful whether any Bill conferring such jurisdiction would be passed. Moreover, considerable time would inevitably elapse before the result of an attempt to obtain the passing of the necessary Bill conferring such jurisdiction could be ascertained, whilst it is obvious that the deadlock which has now arisen requires to be dealt with as promptly as possible. The alternative remedy is to confer the appropriate powers enabling divorce cases to be commenced and prosecuted in District Registries and to provide additional facilities for the trial of poor persons' divorce cases at Assizes. In our opinion, however, such a decentralization of the divorce work would not of itself bring about the success of the present system.

10. The definite conclusion reached by us after a careful consideration of all the circumstances is that the present system cannot be made a success merely by amending the Rules and by further decentralizing the divorce work (though, as will be seen, we regard further decentralization as essential to the success of any scheme), because such measures would only go part of the way towards meeting the real cause of the present failure. In our opinion, therefore, it is necessary that some different system should be substituted for the present system, and we have directed our efforts towards finding the right system to be adopted for the future.

11. All systems for affording legal assistance to poor persons can be grouped under two main heads, namely, systems in which the State itself renders the necessary legal services and systems in which such services are rendered by the profession.

12. If the State were to undertake such legal services it would be necessary to set up a new Government Department or, at the least, greatly to expand and reorganize the Poor Persons' Department, and to appoint a staff of qualified officials to perform the duties of the reporting and conducting solicitors. It is no doubt a proper function of the Government to ensure that meritorious poor persons are not deprived of

access to the High Court by lack of means, but the assumption by the Government of the duty of giving advice to and conducting litigation for private persons directly is open to many objections. In the first place it must be exceedingly costly. Secondly, it involves the loss of much voluntary energy which is at present available. In the third place the giving of legal advice to and the conduct of legal proceedings for another under a voluntary system places the legal agent under a direct personal responsibility to the lay client who is dependent upon the skill and honesty of his agent, and the relationship must involve complete trust on the one side and complete independence of judgment on the other. This relationship, which is essential for the maintenance of honesty and skill will, with difficulty, survive the substitution of such an organization as a Government Office for the individual solicitor and counsel. This objection does not depend upon any theoretical dislike to State intervention but upon the peculiar nature of the tie between solicitor and client.

If the scheme proposed in this Report should fail to prove effective it is difficult to see what alternative would then be available except the institution of a State Department, however objectionable on other grounds such a measure may be, and in that event the question of the institution of a State system will require further consideration. We concur in the views expressed on this subject in the Report of the Committee appointed to enquire into the Poor Persons' Rules in the year 1919, and would only add that, in our opinion, there exists a moral obligation on the part of the profession, in return for the monopoly in the practice of the law which it enjoys, to render gratuitous legal assistance to those members of the community who cannot afford to pay for such assistance, provided that no undue burden is thereby cast upon any individual members of the profession. The evidence given before us shows that this moral obligation is fully recognized by the bulk of the profession in this country (as indeed it is in most other civilized countries) and that the profession is prepared to discharge it, subject to suitable and equitable arrangements being made for that purpose. Until a fair opportunity has been given to the profession to undertake the duty of rendering legal assistance to poor persons, and until the profession has failed to avail itself of such opportunity the State ought not to be asked to undertake this duty itself. We have therefore refrained from considering the details of any scheme based on the State rendering legal assistance to poor persons.

13. Systems falling within the second group may be sub-divided into two classes, namely :—

(*a*) where the legal services rendered by the profession to poor persons are paid for, and

(*b*) where such legal services are gratuitous.

14. The adoption of any system falling within the first of these two classes would necessitate the provision of funds not only for the expenses of organization and administration but also for the payment of the necessary remuneration of the solicitors employed. Such funds would have to be provided either by the Government, or by voluntary subscriptions, or by a compulsory levy on the whole legal profession, aided, possibly, by the money which the poor persons might be able to contribute, or by a combination of some or all of these means. The establishment and maintenance of any system on these lines present many difficulties, both practical and otherwise, and should not, in our opinion, be attempted so long as a workable system based on gratuitous service can be discovered. In view of the conclusion to which we have arrived, as hereinafter stated, we have not entered into the consideration of the details of any such system.

15. Eliminating systems based upon the State rendering legal services and systems based on payment for legal services rendered by the profession, there remain systems based on gratuitous legal services rendered by the profession. Any such system in order to be successful must have the good-will of the profession. The present system is no doubt one which falls within the class now under consideration, but, as before stated, one of its main weaknesses, in our opinion, is that its organization and administration are in official hands and not in the hands of the profession upon which falls the burden of carrying it into effect. If gratuitous service is to be rendered, it is, of course, unreasonable to suggest that the profession should, in addition, bear the whole burden of providing the expenses necessary for the proper organization and administration of the system. Hitherto the State has freed poor persons from all Court fees and has provided and staffed the Poor Persons' Department at considerable expense, and we have reason to believe that the Government would continue to give reasonable financial aid to any practical system based on gratuitous service. Moreover, the evidence has clearly demonstrated that there exists sufficient good will and sympathy in the profession to ensure the successful working of any well-considered scheme based on gratuitous service.

16. Our investigations further tended to show that the profession would not favourably regard any such system unless the following three essential conditions were complied with, *viz.* :—

(1) the divorce work to be further substantially decentralized,

(2) the organization and administration of the work to be entrusted to the profession instead of being in the hands of officials, and

(3) a reasonable annual grant in aid of the expenses of administration to be made by the Government.

17. As regards the first of these conditions, it was clearly brought home to us that (on the assumption that no jurisdiction in divorce would be conferred upon the County Courts) the minimum decentralization which would meet with the acceptance of the profession, was that poor persons' divorce cases should be capable of being commenced and prosecuted in as many District Registries of the High Court and of being tried at as many Assize Towns as reasonably possible.

Country solicitors attach considerable importance to the point that the divorce business should be conducted in the District Registries of the High Court and not in the District Probate Registries. The reasons for this preference are that the District High Court Registrars are accustomed as an ordinary matter of routine to deal with contentious interlocutory applications, such as would necessarily occur in divorce proceedings, and that such applications would be altogether foreign to the duties ordinarily performed by the District Probate Registrars which are confined to non-contentious work. We have carefully considered this point and are of opinion that the reasons so advanced are well-founded and ought to be accepted if the good-will of the country solicitors is to be secured.

18. As it appeared to us that no insuperable difficulties existed in formulating a practical scheme which would embody the three conditions above indicated and which would also solve the problem confronting us, we considered it advisable before going further into details to ascertain whether we were right in the impression we had formed that the principles upon which such a scheme would be founded would meet with the approval of the profession as a whole. With this object in view Sir Roger Gregory and Mr. A. H. Coley at our request undertook the task of bringing the outline of such a scheme before the Law Society and the provincial law societies, with the result that the Law Society and 49 out of 81 provincial law societies were wholly in favour of the principles underlying such a scheme ; 24 provincial law societies were neutral or expressed no opinion, and only 8 provincial law societies expressed an adverse view. As regards the latter, however, we have every reason to hope that if the scheme which we recommend were adopted they would assist the rest of the profession in carrying it into effect. If not, we believe that the Law Society could arrange for the areas which they cover.

19. Having thus ascertained that a scheme on the lines above indicated would meet with the approval of the bulk of the profession, subject to details being satisfactorily arranged, we proceeded to consider the best method of carrying such a scheme into effect, having special regard to the views expressed by the bodies officially representing the profession.

20. In the result, after considering the whole matter in all its bearings, we have formulated and recommend for acceptance the following

SCHEME.

(1) The work in connection with poor persons' matrimonial causes to be further decentralized by

(*a*) enabling such matrimonial causes to be commenced and prosecuted in the District High Court Registries at the following places :—

Birkenhead.	Lewes.
Birmingham.	Liverpool.
Bristol.	Manchester.
Cardiff.	Newcastle.
Carlisle.	Norwich.
Derby.	Nottingham.
Durham.	Portsmouth.
Exeter.	Southampton.
Ipswich.	Swansea.
Leeds.	York.
Leicester.	

(*b*) enabling such matrimonial causes to be tried at the following Assize towns :—

Bristol.	Leicester.
Carlisle.	Lewes.
Derby.	Winchester.
Durham.	York.

in addition to the following at which poor persons' divorce cases are now tried under Order 36A, Rule 8 :—

Birmingham.	Norwich
Cardiff (or Swansea when	Newcastle
the Glamorgan Assizes	Manchester.
are held at Swansea).	Liverpool.
Chester.	Exeter.
Nottingham.	Leeds.

(2) (*a*) The Poor Persons' Department to be abolished and all work in connection with poor persons' applications and cases to be taken over by the profession as a whole, free from any official control.

(*b*) The work to be done under the supervision of the Law Society and provincial law societies by Committees to be appointed by those Societies and approved by the Lord Chancellor.

(*c*) The Committees to have power to grant certificates entitling the grantees to be admitted to take defend or be parties to any legal proceedings in the High Court as poor persons.

(*d*) The Committees to nominate the conducting solicitors and to

exercise a general supervision over the conduct of the proceedings, the following fundamental conditions being observed, viz. :—

(i) *the test as to means to remain the same as under the present Rules* unless and until altered by Rules of Court,

(ii) no money to be demanded or received for profit costs or office expenses unless sanctioned by the Court or by the Rules of Court for the time being in force, and,

(iii) no higher deposit for out-of-pocket expenses to be required from any poor person than may be sanctioned from time to time by Rules of Court.

(3) A grant of not less than £3,000 per annum to be made by the Government in aid of *administration expenses* ; such grant to be paid to the Law Society and to be appropriated by that Society in such a manner as may be considered best in the interests of the Scheme as a whole.

21. To ensure the successful conduct of the interlocutory work by the District High Court Registrars, it is most desirable that there should be close contact between them and the Judges of the Probate Division, and that the authority of the President over the general conduct of business should be as effective in the District Registries as in the Principal Registry. In particular, the power of the Court to dispense with naming a co-respondent or a woman with whom a husband is charged with adultery and to dispense with service or to authorize substituted service requires for its judicious exercise special skill and experience. We recommend that, where an application for any of these purposes is made in a District Registry, the papers (including the affidavits in support of the application) should be forwarded by the District Registrar to the Senior Registrar of the Probate Division, and that he should, unless in his opinion the nature of the case, as disclosed upon the papers, requires a hearing before the Judge, himself grant or refuse the application and indicate his decision in writing to the District Registrar.

Power should, however, be reserved to the Lord Chancellor and the President acting together from time to time to dispense with this requirement in the case of any particular District Registry.

22. We have in Appendix III set out the administrative details of the Scheme but in our opinion it is undesirable that such details should be embodied in Rules of Court. The manner of operating the Scheme should be left in the hands of the profession, subject to compliance with the fundamental conditions as above set out, which alone should be embodied in the Rules. The details entered in this Appendix are such as, in our opinion, may well be adopted by the profession until experience dictates some better method of operation.

23. In order to carry into effect paragraph (1) of the Scheme it will be necessary for the Rule Committee to pass Rules to the effect set out in Part I of Appendix IV, and in order to carry into effect paragraph (2)

of the Scheme it will be necessary for the Rule Committee to pass Rules to the effect set out in Part II of Appendix IV.

24. If the Scheme be adopted there will necessarily be a transition stage in respect of which we recommend that the following arrangements should be made :—

(1) a day to be appointed in consultation with the Law Society for the coming into operation of the Scheme ;
(2) the appointed day to be published with an intimation that on and after that day no further applications should be made to the Poor Persons' Department except in pending cases ;
(3) no fresh applications to be accepted by the Poor Persons' Department on or after the appointed day, and any applications arriving on or after that day to be returned to the applicants with an intimation that they should apply to the appropriate Law Society;
(4) all applications received before the appointed day and not already sent to a reporter to be handed over to the Law Society, together with the deposit (if any) ;
(5) all other applications and cases pending on the appointed day to be worked out under the present Rules, which should be kept alive for that purpose only.

25. Our recommendation in favour of the adoption of the Scheme is based on the following (amongst other) reasons :—

(1) because the Scheme is one which has in principle the general approval of the majority of the law societies officially representing the profession and therefore should have every prospect of success,
(2) because the Scheme involves the transfer of the organization of the work from official hands to the hands of the profession, thus substituting organized legal aid for individual legal aid and making for greater responsibility whilst permitting of greater freedom of action,
(3) because under the Scheme solicitors will be much more ready to undertake divorce cases than under the present system as the request to do so will come, not from a paid official, but from members of their own profession who are themselves bearing their full share of the burden,
(4) because under the Scheme the work will be more evenly distributed and no members or class of members of the profession will be called upon to bear an undue share of the work,
(5) because under the Scheme the Committee will be able to obtain the assistance of local legal aid and welfare societies, charity organization societies and similar bodies, and will thus be enabled to come to a much better conclusion as to the means and merit

of the poor persons than a reporter under the present systems and

(6) because the Scheme solves the problem which has confronted us, and we have been unable to discover any better scheme.

26. In conclusion we desire to acknowledge the services of our Secretary, whose zeal and industry have been of the greatest assistance.

We are, my Lord,

Your obedient Servants,

(Sgd.) P. OGDEN LAWRENCE.
R. F. BAYFORD.
A. H. COLEY.
ROGER GREGORY.
L. R. LUMLEY.
HENRY MADDOCKS.
R. S. MEIKLEJOHN.
CLAUD SCHUSTER.
ETHEL SNOWDEN.

ENID ROSSER (*Secretary*).

Dated this 17th day of February, 1925.

APPENDIX I

ALPHABETICAL LIST OF WITNESSES EXAMINED BY THE COMMITTEE.

A. Vernon Baldwin, Esq., Solicitor (Messrs. J. N. Mason & Co.).

C. E. Barker, Esq., Clerk to the City of Birmingham Justices. Member of the Committee of the Birmingham Poor Man's Lawyers' Association.

Sir T. Willes Chitty, Bart., Senior Master of the Supreme Court. Prescribed Officer for the King's Bench Division.

E. R. Cook, Esq., Secretary to the Law Society.

A. C. Crane, Esq., Solicitor (Messrs. Engell & Crane).

H. Dukinfield Darbishire, Esq., Solicitor, Honorary Secretary to the Liverpool Poor Man's Lawyers' Association.

K. T. S. Dockray, Esq., Solicitor. Representative of Manchester Law Society.

P. H. Edwards, Esq., Solicitor (Messrs. Harrington Edwards, & Cobban).

F. C. G. Gurney-Champion, Esq., Solicitor.

Adrian Hassard-Short, Esq., Secretary to the Poor Persons' Department.

E. S. P. Haynes, Esq., Honorary Solicitor to the Divorce Law Reform Union.

W. A. Inderwick, Esq., Senior Registrar at the Principal Probate Registry.

David McIver, Esq., President of the Liverpool Law Society.

R. S. O. Mais, Esq., Joint District High Court and Probate Registrar at Manchester.

H. F. O. Norbury, Esq., Registrar at the Principal Probate Registry.

Harvey Plant, Esq., Solicitor (Messrs. Rawle Johnstone & Co.).
Reginald Poole, Esq., Solicitor (Messrs. Lewis & Lewis).
Mrs. Seaton Tiedeman, Secretary to the Divorce Law Reform Union.
Dr. A. E. Western, Honorary Solicitor to the Tenants and General Legal Protection Committee, Toynbee Hall.
R. Walford White, Esq., Solicitor.
J. J. Withers, Esq., Solicitor (Messrs. Withers, Bensons, Currie, Williams & Co.).

Memoranda were also submitted by the following :—

Norman Lee, Esq., Solicitor, Bradford.
J. A. Howard-Watson, Esq., Solicitor (Messrs. Bateman & Howard-Watson, Liverpool).

Appendix II

TABLE I

Showing the Number of Applications in Cases other than Matrimonia Causes.

Court.	1922.				1923.				1924.			
			Pending.				Pending.				Pending.	
	Made.	Granted.	At commencement of year.	At end of year.	Made.	Granted.	At commencement of year.	At end of year.	Made.	Granted.	At commencement of year.	At end of year.
Court of Appeal ...	20	3	1	2	14	5	2	1	22	4	1	5
Chancery	165	29	75	70	185	27	70	85	192	31	85	95
King's Bench	420	132	75	85	496	142	86	143	563	171	143	158
Probate	10	4	14	3	23	0	3	16	13	4	16	8
Total ...	615	168	165	160	718	174	161	245	790	210	245	266

TABLE II

Showing the Number of Applications in Matrimonial Causes.

Year.	Made.	Granted.	Pending.	
			At Commencement of Year.	At end of Year.
1922	2,435	1,005	1,037	1,216
1923	2,235	1,106	1,216	1,422
1924	2,433	1,254	1,456	1,529

TABLE III

Showing the Number of Matrimonial Cases dealt with in the Year 1924 *as compared with the Applications Granted during the same Period.*

	Applications Granted.	Petitions Filed.	Cases Heard.	Successful.
Husbands ...	562	309	285	269
Wives	688	379	266	262
Co-respondents	4	—	3	1
Total ...	1,254	688	554	532

TABLE IV

Showing the Proportion of London and Country Cases.

Year.	Applications made.		Applications Granted.	
	London.	Country.	London.	Country.
1922	1,144	1,896	444	891
1923	1,123	1,807	426	861
1924	1,233	2,000	388	659

Appendix III

SUGGESTED METHOD OF CARRYING INTO EFFECT THE SCHEME RECOMMENDED IN THE FOREGOING REPORT.

The expression " Law Society " is used in these suggestions to denote either the Society having its office in London (so far as cases arising in London or the surrounding district are concerned), or the local Society in the provinces as regards cases arising within its area.

Every Law Society should appoint a Committee to undertake the control of poor persons' cases, and should triennially in general meeting elect a number of solicitors to serve on the Committee. The number elected should be not less than seven or more than 13, three to form a quorum ; but the number, no doubt, would vary with local conditions. The persons elected should hold office for a period of (say) three years, so as to secure continuity of administration. Provision should be made for supplying vacancies. The Committee should be given power to co-opt two or three perons, not being solicitors, such as persons representing charitable organizations, or institutions for the promotion of

social welfare. All the nominations should be submitted to and approved by the Lord Chancellor. In cases where it is impracticable to obtain an honorary secretary the Committee should have power to appoint a *clerk and pay him a small honorarium. Probably the librarian or clerk to the law society (where there is such an official) would be willing to act and do the work in his spare time.* The Committee should have the duty of inquiring into the application of a party to be admitted as a poor person, having regard to the requirements expressed in Rules of Court, and, if satisfied, of signing a certificate entitling such persons to take or defend or be a party to proceedings in the High Court as a poor person.

A short form of application by a poor person should be provided containing spaces for name and age, whether married or single, and, if married, the number of children, the present or last place of employment, and the average wages earned. The applicant should also state whether or not he has previously consulted a solicitor as to the subject matter of his application, and, if so, with what result. The name or names of a person or persons, to whom, if necessary, reference could be made, should be given. *This form, in the first instance, should be sent to the honorary secretary, or clerk of the Committee (hereinafter referred to as the clerk), who should, after examining it, send for the applicant for a personal interview.* Unless the facts disclosed showed clearly that there was no reasonable ground for the application, the clerk should then make an appointment for the applicant to see the Committee. The Committee at its meeting should make a careful investigation into the circumstances, and have power to administer an oath or require a statutory declaration in writing.

If the Committee are satisfied as to the applicant's poverty, he should then be questioned as to the nature and grounds of his claim and should be required to produce any documents in support of it. In the notice to him to attend the Committee an intimation that he would be required to produce all relevant documents should be given. If the Committee are satisfied as to the applicant's want of means and that he has a *prima facie* case, the Committee should issue to him a certificate, entitling him to be admitted as a poor person, for which purpose a short printed form of certificate should be used. *Rules of Court should fix the maximum amount of deposit which the Committee might require any applicant to make at the sum of £5 and, in special circumstances, the further sum of £5.* Deposits when required should be paid to the clerk, who should keep a separate banking account.

It is desirable that all forms used should be as simple as possible.

Each Committee should nominate a number of solicitors willing to act who would form a panel of "conducting solicitors." The number of the panel might be based upon the number of members of the law society; but again, local conditions would be the determining factor in this

respect. The members constituting the panel should serve for, say, three years or possibly less. The Committee should nominate a conducting solicitor from the panel, regard being had to his special qualifications for the particular case, and allowance being made for the fact that he had already conducted a number of cases, or had cases in hand at the time. It should be recognized as an honourable obligation on the part of the solicitor nominated to undertake the case and see it through. The Committee should have to exercise a discretionary power as to what, if any, part of the deposit should be paid out for out-of-pocket expenses during the progress of the action. Any sum paid out should be paid on the simple receipt of the solicitor receiving the amount, stating the nature of the disbursement, and he should be required to give an account of his receipts and disbursements. The Committee should have power from time to time to call for a report from the conducting solicitor on each case, and it should itself keep records from which classified lists of the cases dealt with by the Committee, and other statistical information would be compiled so as to be available for official purposes. The Committee should have power to recommend to the Court at any time that a certificate should be cancelled and as regards the solicitor that he should be relieved of the case and another solicitor appointed in his place.

The Bar Council and the Circuits should supply to the Law Society lists of counsel willing to assist poor persons.

If possible, a room at the local Courts, or in some other public building, should be reserved for the business of the Committee. Notice of the appointment of the Committee and of the dates fixed for their sittings should be displayed in the local Courts, and in the Town Hall or principal local building. A leaflet stating shortly the powers of the Committee should be obtainable at the same places. The business of the Committee should, wherever possible, be transacted in the evening. The Committee should sit at fixed times, or, alternatively, a meeting should be called when there were, say, two or three applications ready to be considered.

Importance is attached to the meetings of the Committee being held in a room set apart for the purpose. If this were done one difficulty which has been experienced incident to the intended litigant attending in the first instance at the solicitor's office, would be avoided. In fact, if such a place could be obtained for all the business connected with these cases, including the conduct of them, it would be a great advantage. It is thought that, at any rate, in the large centres, a room in a public building could be obtained without much difficulty, and in cases where this was not practicable other accommodation could be obtained at a small cost.

It is recognized that it would be necessary to establish several centres for London and the surrounding district.

In areas other than cities and town and urban districts the cases would

be relatively few and the principal office for the receipt of applications should be the most populous town in the area, unless some other town were more accessible or suitable. Probably in these cases postal communication would, in the first instance, have largely to be depended upon. It should, however, be possible for a local solicitor on the rota to make preliminary enquiries and communicate with the centre, and the Committee there should, in a clear case, adopt his report, without requiring the applicant to attend for a personal interview in the first instance. Alternatively, the Committee might appoint an agent at each town in the area where a sitting of the County Court was held, who might make the preliminary enquiries. The essential point must be that the Committee should keep control and exercise supervision. Geographical and other considerations must be taken into account, and difficulties should be overcome by each law society formulating a scheme for the efficient administration of its own area.

APPENDIX IV

PART I

SUGGESTED RULES FOR ALLOWING PROCEEDINGS BY POOR PERSONS TO BE COMMENCED AND PROSECUTED IN CERTAIN DISTRICT REGISTRIES.

1. Proceedings by poor persons under the Matrimonial Causes Acts or any of them may be commenced and prosecuted in the District Registries of the High Court hereinafter mentioned and the Matrimonial Causes Rules for the time being in force shall apply to such proceedings and shall, as regards such proceedings, be construed as if each such District Registry were named in place of the Divorce Registry, and the duties and powers of the Registrars under such Rules shall, save as in these Rules otherwise provided as regards such proceedings, be exercised by the District Registrars of such District Registries respectively.

The forms prescribed for use in the Divorce Registry shall be used in proceedings in matrimonial causes in District Registries with such modifications as may be required to make them conform to these Rules.

2. All appearances to any proceedings commenced in a District Registry under the last preceding Rule shall be entered in the District Registry and an address for service within the district shall be given.

3. Any party to and any person who may have duly intervened in a matrimonial cause pending in a District Registry may apply to the Court or to a Judge or to the District Registrar for an order to remove the cause from the District Registry to London and the Court Judge or District Registrar may make an order accordingly if satisfied that there is sufficient reason for doing so upon such terms, if any, as shall be just, and where any such order is made the cause shall as from the date of the order proceed in the Divorce Registry.

4.—(i) An application under the Matrimonial Causes Rules, 1924, for any of the following purposes, namely :—

(*a*) for leave to dispense with the requirement in Rule 4 of the said Rules that the alleged adulterers, if male, shall be made co-respondents in the cause and served with a sealed copy of the petition ; or

(*b*) for leave to dispense with the requirement in Rule 8 of the said Rules that service of any document on a party who has not entered an appearance must be personal service ; or

(*c*) for leave to substitute for personal service some other mode of service under Rule 9 of the said Rules, or

(*d*) for leave to dispense with the delivery and notice required by Rule 17 of the said Rules,

shall be dealt with in the manner provided in this Rule.

(ii) The Registrar in whose Registry the application is made shall forward the application, together with such affidavit or affidavits as are filed in its support, by post to the Senior Registrar of the Principal Probate Registry, and the said Senior Registrar shall thereupon make such order upon the application as to him in his discretion seems just, or shall, if in his opinion the circumstances of the case require it, refer it to a Judge in Chambers and the Judge in Chambers to whom the application is so referred shall either make such order upon the application as he in his discretion thinks just, or may direct an oral hearing before him of the matter in question. The Senior Registrar shall inform the District Registrar accordingly.

(iii) The Lord Chancellor with the concurrence of the President of the Probate, Divorce and Admiralty Division may by order from time to time dispense with the provisions of this Rule in the case of any District Registry named in the order.

5. The practice for the time being prevailing as to fixing the place of trial of actions pending in a District Registry and as to entering such actions for trial at Assizes shall apply to poor persons' matrimonial causes commenced and pending in a District Registry under these Rules and Order 36A shall as regards such causes be deemed to be modified accordingly.

6. The President of the Probate, Divorce and Admiralty Division may appoint the District Registrar of a District Registry to which these Rules apply to perform the duties of the District Probate Registrar under Order 36A, Rule 6.

7. Where a matrimonial cause is proceeding in a District Registry under these Rules every decree and order shall be entered in the District Registry in the proper book in the same manner as a like decree or order in a matrimonial cause proceeding in London would be entered in the Principal Registry and an office copy of every such decree or order

shall be transmitted by the District Registrar to the Principal Registry in London and shall be filed there.

8. The District Registries to which these Rules shall apply are the District Registries of (*insert names of places mentioned in paragraph* (i) (*a*) *of the Scheme*),
and such other District Registries as may be named in any Order made from time to time by the Lord Chancellor with the concurrence of the President of the Probate, Divorce and Admiralty Division.

9. Poor persons' matrimonial causes shall be taken at the following places in addition to the places named in Order 36A, Rule 8 :—
(*Insert names of places mentioned in paragraph* (i) (*b*) *of the Scheme.*)

PART II

PROPOSED NEW RULES.

ORDER XVI.

22. Any person obtaining a certificate under this Order shall be admitted to take or defend or be a party to any legal proceedings in the High Court of Justice (except bankruptcy proceedings and criminal causes or matters) as a poor person on the terms and conditions mentioned in the subsequent rules of this Order. Provided that the following matters shall not be deemed to be criminal matters within the exception to this rule, viz. :—

(*a*) Applications to the Court to order a Justice or Justices in Petty or Quarter Sessions to state a case.

(*b*) Applications for certiorari mandamus or prohibition directed to such a Justice or Justices ; and

(*c*) The hearing of such cases stated and applications.

23. A certificate under this Order means a certificate issued by the Law Society or by any provincial law society (after inquiry by a Committee appointed by the Society and approved by the Lord Chancellor and hereinafter called the Committee), signed by two members ot the Committee present at the inquiry and certifying—

(1) that the poor person is not worth a sum exceeding £50 (excluding wearing apparel, tools of trade and the subject matter of suce proceedings), or in special circumstances a sum not exceeding £100 ; and

(2) that the usual income from all sources of the poor person does not exceed £2 a week, or in special circumstances a sum not exceeding £4 a week ; and

(3) in matrimonial causes, *where the wife is the poor person*, in addition to (1) and (2), either—

(*a*) that the poor person and her husband are not worth the amount specified in (1), and that their joint income does not exceed the amount specified in (2) ; *or*

(*b*) *that it is reasonable in the circumstances that the poor person should be admitted to take, defend or be a party to the proceedings as a poor person.*

Provided that in cases within 3 (*b*) the certificate shall state whether the proceedings are limited to such proceedings as are necessary to enable the applicant to obtain security for her costs, or are to extend to any, and what, further or other proceedings; and

(4) that the poor person has reasonable grounds for taking or defending or being a party to such proceedings; and

(5) the name and address of the solicitor who has been nominated and has consented to conduct the proceedings on behalf of the poor person (hereinafter called the conducting solicitor).

24. The Committee may require any person claiming a certificate to make an affidavit or statutory declaration as to any facts upon which the claim is based.

25. The certificate shall be filed by the conducting solicitor—

(1) *in the Central Office* if the matter is proceeding or intended to proceed in London in the Chancery Division or King's Bench Division,

(2) *in the Principal Probate Registry* if the matter is proceeding or intended to proceed in London in the Probate, Divorce and Admiralty Division,

(3) *in the District Registry* of the High Court if the matter is proceeding or intended to proceed in a District Registry.

26. Every certificate complying on the face of it with the requirements of Rule 23 and purporting to be signed as provided by that rule shall be accepted by the Central Office or by the Registry as the case may be for the purpose of filing.

27. On the filing of the certificate there shall be issued to the conducting solicitor a memorandum of such filing bearing the stamp of the office where such certificate is filed and in all subsequent proceedings the production of such memorandum shall be sufficient evidence that a certificate in accordance with Rule 23 has been duly filed.

28. No court fee shall be payable in respect of the filing of the certificate nor in respect of the memorandum to be issued under Rule 27 and after such filing the poor person named in the certificate shall not be liable for any court fees and *unless the Court or a Judge shall otherwise order no poor person shall be liable to pay costs to any other party or be entitled to receive from any other party any profit costs or charges. Except as provided by the rules of this Order no person shall take or agree to take or seek to obtain any payment fee profit or reward for the conduct of the*

proceedings or for out-of-pocket expenses and any person so doing shall be guilty of contempt of court.

If any such payment fee profit or reward shall be made given or promised the certificate may be ordered to be taken off the file in which case the poor person shall not afterwards be admitted in the same case or any proceedings as a poor person unless otherwise ordered.

Provided that nothing contained in this rule shall prevent the Committee from requiring a poor person in a matrimonial cause or in any other proceedings where in the opinion of the Committee the special circumstances should so require to deposit with them or as they shall direct any sum of money not exceeding in the first instance the sum of £5 to cover the out-of-pocket expenses of the conducting solicitor and if such deposit shall in the course of the proceedings be found insufficient such further sum not exceeding £5 as the Committee may direct. Every sum so deposited shall be utilized only for the payment of any necessary expenses of the proceedings and any surplus shall be repaid to the poor person.

29. The Court or a Judge may at any time (and whether or not any application be made by any law society or by any person for that purpose) discharge the certificate and direct it to be taken off the file and thereupon the poor person shall not be entitled to the benefit of this Order.

30.—(1) *No poor person nor any solicitor conducting the proceedings for him shall discontinue settle or compromise such proceedings without the leave of the Court or a Judge.*

(2) *No poor person shall discharge any solicitor or counsel acting for him without the leave of the Court or a Judge.*

(3) *No solicitor or counsel acting for a poor person shall be at liberty to discontinue his assistance unless he satisfies the Court or a Judge that he has reasonable ground for so discontinuing.*

31. Should the conducting solicitor discover at any time that the poor person (or in matrimonial causes where the wife is the poor person that she or her husband) is possessed of means beyond those stated in the certificate, he shall report in writing the matter at once to the Court and to the Committee which nominated him.

31A. In matrimonial causes every petition and answer shall be drawn by a barrister and signed by him and proofs of the witnesses shall be furnished to him with the instructions to draw the petition or answer.

31B. Costs ordered to be paid to a poor person shall be taxed having regard to Rule 28. Where it appears to the Court or a Judge that the special circumstances of the case require it, the Court or a Judge may order that such costs shall include profit costs and charges, but not any fees to counsel.

31C. The Court or a Judge may order to be paid to the conducting solicitor out of any money recovered by the poor person, or may charge

in favour of the conducting solicitor upon any real or personal property recovered by a poor person such sum in respect of costs (not including fees of counsel) as would have been allowed to the solicitor on taxation between himself and his client if he had been retained by his client in the ordinary manner (less such amount as may be recovered from any other party), or such other sum in respect of costs as to the Court or a Judge may seem fit, provided that the total amount so to be paid out for profit costs, or so charged upon the said property for profit costs, shall not in either case exceed one-fourth of the amount or value recovered and remaining after the deduction therefrom of all proper disbursements made by the solicitor.

31D. Every notice of motion, summons or petition on behalf of a poor person (except an application for the discharge of his solicitor) shall be signed by his solicitor, and it shall be the duty of such solicitor to take care that no application be made without reasonable cause.

31E. *There shall be no appeal as a poor person to the Court of Appeal by anyone admitted to take or defend or be a party to any legal proceedings under the rules of this Order without leave of the Court or of the Judge before whom the matter is heard or of the Court of Appeal.*

31F. Any person who has not taken, defended or been a party to any legal proceedings as a poor person in the High Court and any party to proceedings in a Court other than the High Court from which an appeal lies direct to the Court of Appeal shall be admitted on an appeal to the Court of Appeal as a poor person on obtaining a like certificate as is provided by the rules of this Order for the High Court and upon such certificate being filed in the Central Office the provisions of the preceding rules shall *mutatis mutandis* apply to all proceedings in the Court of Appeal.

31G. Nothing in the rules of this Order shall operate as a stay of any proceedings unless so ordered by the Court or a Judge or by the Court of Appeal.

31H. Rules 21 to 31G of this Order shall apply to (*a*) proceedings for divorce or other matrimonial causes, and (*b*) proceedings on the Crown side of the King's Bench Division.

APPENDIX V

REPORT OF THE SPECIAL COMMITTEE OF THE LAW SOCIETY, 1923.

Adopted by the Council on the 23rd March, 1923.

Early in 1919 Lord Birkenhead appointed a Committee of which Mr. Justice P. O. Lawrence was Chairman and Mr. Coley and the late Mr. Charles Goddard were members to report upon the administration of the Poor Persons Rules.

That Committee found that in 1918 about 4,000 persons applied to be allowed to proceed under the Poor Persons Rules. About 2,000 of these applications were granted. About 1,000 petitions were presented for divorce and about 500 went to trial.

Roughly it appeared that for each London case there were two which arose in the Provinces.

There had been great difficulty in finding the requisite number of solicitors to deal with the cases and solicitors of standing had avoided doing so.

The result, as the Committee found, was that there had arisen a class of solicitors who had specialized in the work. Apparently they had charged for reporting and had demanded money from the poor person to cover out-of-pocket and office expenses. The Taxing Masters had supported the claim for " office expenses " with the result that some of the solicitors had engaged special clerks for the work and were carrying on a very lucrative practice in poor persons' cases.

The Committee thought that this state of things was unsatisfactory.

The Committee therefore recommended that the solicitors should be asked to do the work for nothing and that their out-of-pocket expenses should be met out of a payment of £5 which each poor person was to be called upon to find as a condition of being allowed to proceed under the rules.

The Committee stated that they were encouraged in making this recommendation by a belief that if the Law Society and the provincial law societies were asked to provide the necessary professional assistance a sufficiency of such assistance would be forthcoming.

Mr. Coley and the late Mr. Goddard, the two members of the Committee who were members of the Council of the Law Society, concurred generally in the recommendations contained in the Report, but expressed the opinion for the reasons stated in a memorandum appended to the Report that a limited jurisdiction in matrimonial cases should be conferred upon the County Courts.

New Rules of Court were made on the 1st January, 1921, to give effect to the Committee's recommendations and at the same time the Council were asked to make an appeal to solicitors to undertake the work.

Such an appeal was made with the following result.

In London	334 solicitors undertook to conduct	698 cases
In the Provinces	1,383 solicitors undertook to conduct	2,838 cases
	1,717	3,536

At that time the Authorities expressed themselves as satisfied that the help so offered was adequate. *It was supplemented by offers to* report *upon cases, which were then recognized as adequate and have apparently never since ceased in fact to be so.*

Between February, 1921, and May, 1922, the conduct of cases appears to have proceeded satisfactorily. In the latter month, however, the Poor Persons' Department stated that additional conducting assistance was required in London to deal with a further 200 cases per annum. Thereupon *another appeal* was issued to London solicitors only, and as the result 123 solicitors in London offered to conduct cases to an aggregate number of 251 per annum. Thus apparently at that time the situation was met.

On the 5th September, 1922, the Council were informed that solicitors "had shown such marked disinclination to undertake the work" *that on that date there were only a sufficient number of solicitors available to deal with about* 35 *London cases between then and the end of the year. The Council were informed also that at the same date the number of applications granted to proceed under the rules was at the rate of* 90 *per month, and there were* 1,400 *cases in the office.*

The Secretary of the Poor Persons' Department stated that on the 25th October last as a result of withdrawals there were only 313 London solicitors on the rota with a nominal capacity for 754 cases and that practically all had been offered their full quota for 1922.

It was in these circumstances that the President issued *a further appeal.* It has been sent by the Poor Persons' Department in one of two forms to every London and provincial solicitor.

As a result in London 32 solicitors have offered to increase the number of cases they have been in the habit of taking and 68 solicitors have offered for the first time to share in the work. The assistance which is thus offered is to conduct 227 additional divorce cases and 10 cases other than divorce. In addition there are three solicitors who do not state how many cases they will take.

It is estimated by the Department that with this additional assistance they can carry on up to about April, 1923.

In the provinces 58 solicitors have offered to undertake more cases than they have hitherto dealt with and 229 solicitors have offered for the first time to share in the work. The net increase in the number of cases promised to be taken is 818.

It is stated by the Poor Persons' Department that the number of solicitors in the Provinces would be more than sufficient if equally distributed throughout the country but that assistance is greatly needed in the following districts :—Bristol, Exeter, Deal, Chatham, Rochester, Shrewsbury, Southampton, Winchester, Salisbury, Aldershot, Leicester, Birkenhead and throughout the counties of Cornwall, Kent, Hampshire, Norfolk (except Norwich), and in the Isle of Wight.

Under these circumstances we fear that we can only contemplate the failure of the existing arrangements before the end of the legal year, and it becomes necessary to consider what arrangements could be substituted for the present system.

We quite agree with the Report of Mr. Justice Lawrence's Committee that any system that will allow a profit to be made out of these poor persons' cases is liable to abuse and would not be satisfactory. We realize that the burden of *conducting* these cases is so great and the cases themselves are so numerous that it is impossible to expect that the comparatively small number of members of our profession who can undertake them can be expected to deal with the business, although if the practice of the Divorce Court were assimilated to that of the King's Bench Division, and the trial of undefended divorce cases in the provinces was referred to the County Court, a sufficient number of solicitors *might* be willing to undertake the work.

At present, by Order 36A, Rule 8, the trial of divorce cases at the Assizes is restricted to ten towns. The Committee consider that the trial of these cases should be dealt with at all Assize towns.

We are therefore reduced to consider the two alternatives of having the cases conducted by a Government official at the expense of the State or of providing an alternative scheme.

We consider that the conduct of the cases by a Government official at the expense of the State is undesirable owing to the expense and the increase of officialism necessarily involved.

In many districts, such as those in which a University Settlement is situated, there are established bodies of persons who give their services voluntarily and are known as the " poor man's lawyer," and to some extent these have worked satisfactorily, but for the conduct of a mass of litigation of this kind, the greater portion of which is conducted in the Divorce Court, something more is necessary.

Your Committee have held numerous meetings and have considered very many suggestions and they are impressed by the many difficulties which present themselves in dealing with this question.

It is only a small proportion of the profession who practise in the Divorce Court or to whom the practice is familiar.

Many solicitors find the work distasteful either from its associations or on general principles. *The cases involve far more difficulty than the cases in which persons of higher education are involved.*

In some cases the allowance for expenses is insufficient.

Solicitors have often been subjected to severe criticism without any recognition of their services and, although they receive no remuneration, they are liable to be penalized for negligence.

The Committee consider that the work of the reporting solicitor could be dispensed with, as to a great extent, if not wholly, it includes the work of the conducting solicitor, as in order to make a satisfactory report it is necessary that the reporting solicitor should do practically the whole work of the conducting solicitor which afterwards has to be done over again by him.

It *might* be of assistance if Boards of not more than three experienced solicitors were appointed in London and in the various districts of the provinces to superintend the conduct of these cases in conjunction with the officials of the Poor Persons' Department and there is no doubt that sufficient solicitors of position could be found who would undertake this work without remuneration.

Under these circumstances your Committee recommend :—

1. That the trial of these cases should be dealt with at all Assize towns.
2. That the jurisdiction of the County Courts in the provinces should be extended so that they may deal with the trial of all poor persons' undefended cases.
3. That, if necessary, Boards of solicitors should be created in London and the provinces to supervise the conduct of these cases.
4. *That a fund should be provided by the State out of which any expenses incurred over and above the deposit of £5 might be provided subject to the control of* the Board or of the Poor Persons' Department. In making this recommendation the Committee have in mind the fact that nearly all the expenses of these cases are created by reason of the expenses of travelling and they think that the trial of the cases at the Assizes and at the County Court would do much to solve this difficulty.

The Committee feel that until they know what can be done with regard to their suggestions it is impossible for them to deal further with the matter, but the detailed arrangements will in any case require the very careful consideration of persons best qualified to deal with the subject.

The Committee regret that the present position has arisen, but they wish to record the fact that in their opinion *the solicitors' profession as a whole has dealt generously with this matter* and that it is only due to the numerous and exceptional difficulties of the subject, difficulties which can only be appreciated by those who have given the subject close attention, that their efforts have under the present circumstances failed.

APPENDIX VI

REPORT MADE TO THE LEAGUE OF NATIONS AS TO INTERNATIONAL ARRANGEMENTS FOR LEGAL ASSISTANCE FOR THE POOR,

AUGUST, 1924.

Distributed to the Council, the Members of the League, and the Delegates at the Assembly.

By its resolution of September 27th, 1923,[1] the Assembly placed on its agenda for 1924 the question of international arrangements for legal assistance for the poor and instructed the Secretary-General in the interval to prepare a report and to make such enquiries, under the authority of the Council, as might be found desirable without expenditure of League funds.

In execution of the above resolution, the Secretary-General has made various enquiries into the question, and has in particular convened a Committee of experts, from whom the information contained in this report is mainly derived. He has now the honour to present the following report to the Assembly.

I. NATURE AND INTERNATIONAL ASPECT OF THE QUESTION.

The question before the Assembly has been taken to be that of assistance in matters of *civil*, as distinguished from *criminal*, law. The defence of the poor in matters falling within the sphere of the criminal law is a subject involving different considerations ; it was not raised in the document submitted to the last Assembly and is understood not to be covered by the Assembly's resolution.

The term " legal assistance for the poor " as used in the Assembly's resolution, covers two related but distinct forms of assistance :

1. Assistance in litigation, which takes the form of exemption from fees, assignment free of charge of counsel, solicitors, avoués, free service by the competent officers in the serving of process and the execution of the judgment.
2. The provision, free of charge or for a nominal charge, of legal advice, legal assistance in the drawing up of contracts, wills and so forth, irrespective of whether any litigation is in prospect.

The French term " assistance judiciaire gratuite " is used in conventions and laws primarily to describe the former type of assistance ; the latter, it is understood, can best be described as " consultation gratuite." In English, the former class of assistance can conveniently be described as " assistance in litigation " and the latter as " free provision of legal advice."

The problem of bringing justice within the reach of the poorest is primarily a domestic problem. It assumes an international aspect where the poor person :

(*a*) is an alien, and, as such, may be debarred from assistance ; or

(*b*) either is not resident in the country in which his claim arises, or requires legal assistance in proving facts or establishing the legal consequences of facts occurring in a different country from

[1] The text of the resolution was as follows :—

" The Assembly decides :

" (*a*) To place on the Agenda of the Fifth Assembly the question referred to in the Memorandum A. 119. 1923. V., regarding international arrangements for legal assistance for the poor ;

" (*b*) To invite the Secretary-General to prepare a report in the meantime, and to make such enquiries, under the authority of the Council, as may be found desirable, without expenditure of League funds."

that in which his claim arises, or requires help in ascertaining the law of such a country.

The extent to which a poor person may require legal protection and assistance in a country of which he is not a national, or where he is not resident, is greater than might at first be supposed. The temporary or permanent poor immigrant may not merely need such assistance in defending new rights which he acquires in his new country, but he may have rights to assert in the country which he has left, or may require to take action in that country as a necessary step in securing rights due to him in the new country, or he may do something in the new country which affects the rights of persons whom he has left behind him. Questions of personal status, marriage and divorce, maintenance of wife and children, succession to property, debt, payment of workmen's compensation, etc., may easily present one or more of these aspects. Another class of case in which a poor man may require assistance outside his country of residence is presented by various kinds of fraud practised by organizations operating outside the State in which they establish themselves, and of which he may find himself the victim.

No country can remain entirely indifferent to the facilities which their nationals abroad have for obtaining access to the courts and legal advice free of charge. The problem is, however, undoubtedly of greatest interest for the countries from which emigration is largest and for the countries which have the largest immigration.

In 1923, the New York Legal Aid Society gave assistance to 29,000 applicants, of whom 13,000 had been born in foreign countries, and 7,000 were still aliens. These foreign, or naturalized, applicants came from every part of the world, including not merely every part of Europe but also Arabia, Armenia, China, Egypt, Japan, Mexico, Persia, Turkey, Cuba, and the West Indies.

These figures for a single bureau which deals freely with applications from foreigners show how considerable must be the total number of cases in all countries in which a poor foreigner stands in need of legal aid. No figures can, unfortunately, be given to indicate how frequently the aid is needed outside the country in which the applicant resides. The poor person, however, perhaps most frequently requires legal assistance in connection with his domestic relations or with succession to property or workmen's compensation, and these questions in the case of foreigners are very apt to involve some kind of action abroad. The experience of the American organizations is understood to be that where the action is of a routine character (execution of a simple document, obtaining of a birth or marriage certificate, etc.) the necessary steps can be taken through the consular organization, but that as soon as any complicated question of law or fact arises, there is at present no adequate machinery for dealing with the situation.

The above statement of the international aspects of the question suggests that international action is desirable in two directions :

(*a*) Steps may be taken to secure universal application of the principle that the foreigner, whether resident in a country or not, is entitled to legal assistance of every kind on the same footing as a national of the country ;

(*b*) Efforts may be made to establish co-operation between the official and private organizations which give legal assistance in the various countries, with a view to enabling them to obtain from one another assistance in dealing with the cases which come before them.

The Secretary-General has the honour to call the Assembly's attention to the recommendations made on these points by the Committee of experts and set out in Section IV of the present report.

II. PRESENT POSITION OF THE QUESTION.

In the first section of this report a distinction is drawn between assistance in litigation and free legal advice.

1. *Assistance in litigation.*

Although, as will be seen below, the organizations which give free legal advice do also, in the countries where they are most developed, conduct actual litigation for their clients, what is meant by the French term " assistance judiciaire gratuite " (translated in this report by " assistance in litigation ") is the admission of a poor person to the benefit of a special procedure, *in forma pauperis*, established by law as part of the regular administration of justice.

The procedure conforms, generally speaking, to a common type, but there are interesting local variations.

The applicant has, in principle, to satisfy two requirements :

(1) He must usually show a case which, *prima facie*, merits investigation. For this purpose he must set out the nature of the proceedings which he wishes to bring or defend. This rule is not however universal. In Sweden, for example, applications are decided solely in the light of the applicant's circumstances and irrespective of the merits of his case.

(2) He must bring himself within the class of persons entitled to free legal aid.

In some countries, of which England may be taken as an example, the second requirement may involve proof that the applicant does not possess more than a fixed minimum of property and is not receiving more than a fixed rate of income or earnings. In Spain, the applicant must be a wage earner not occupying a permanent post or his income from all sources must not exceed twice the salary locally current for a manual worker. In other countries, as, for example, Germany, Japan, Poland and Sweden, it must be shown that the costs of the proceedings cannot be borne without trenching upon the resources necessary for the maintenance of the applicant and his family. In France, under the Law of June 22nd, 1851, and Laws of 1886 and 1901, the applicant must prove simply that the inadequacy of his means prevents him from sustaining his rights either as plaintiff or defendant. The same principle applies in Holland.

The evidence of poverty to be produced may take the form of a declaration by the applicant made before a public authority and certified by the latter to have been so made, or that of a certificate by some public authority as to the applicant's situation. In France, for example, there must be produced to the Bureau d'assistance judiciaire a *certificat d'indigence*, authenticated by a mayor, but this is a mere statement made on a form supplied by the mayor and authenticated by him, for the veracity of which the mayor takes no responsibility. At the same time, however, in France the applicant submits a *certificat de non-imposition*, which is an official certificate that he does not pay taxes. Similarly, in England, the applicant submits a statement as to his means and a sworn affidavit in support of such statement. In other countries, however, as, for example, in Holland, Italy, Japan and Poland, the applicant produces a statement by the competent local authority certifying what his situation is.

The application must sometimes, as in Germany, Holland, Italy, Spain and England, be addressed direct to the authority competent to decide upon it. A system which is perhaps more easily applicable exists in France, under which the application can be addressed to the court of the applicant's place of residence, notwithstanding that the action is to be tried elsewhere, or to the Mayor, with a view to its being forwarded to the competent authority.

The decision as to the admission of an applicant to plead under the poor persons' procedure, is taken by a public authority connected with the administration of justice. This authority may be a bureau or committee constituted in a prescribed manner for a locality or attached to a particular court, or the power may be vested in the court itself or in officers of the court or in the Minister for Justice. *An appeal is usually allowed* in varying degrees against refusal to grant assistance or, in the interests of the administration of justice, against a decision granting assistance.

Admission to plead as a poor person does not usually give exemption from liability to pay costs awarded to the other party or from liability to meet the effects of a judgment in favour of the other party. *Its object is to enable the applicant to put his case to the court as if he were able to pay the necessary fees and provide himself with legal aid.* He is therefore provisionally exempted from payment of the fees connected with the procedure and has officers of the court placed at his disposal, free of charge, for the service of process and execution of any judgment in his favour. If the rules of the court, or the nature of the case, require that he should have legal assistance and be represented by an advocate, such assistance is allotted to him. In the poor persons procedure of the Supreme Court in England, two solicitors and a barrister are, in fact, connected with every case which is accepted ; one solicitor is deputed to investigate the merits of the case and the circumstances of the applicant and, if the application is approved, another solicitor and a barrister take charge of the case. In most Continental countries, and in Japan, members of the legal profession are under an obligation to render such gratuitous services. In England, the United States, and in Norway, Denmark and Sweden, there is no obligation, but members of the profession are invited to place their names upon a list of lawyers prepared to give gratuitous legal assistance to the poor. It is perhaps usual for lawyers conducting poor persons' cases not to be paid fees but only reimbursed their out-of-pocket expenses, and as a rule the poor person cannot choose his own legal adviser. In Norway, Denmark and Sweden, however, the applicant has the choice of his lawyer and the lawyer is paid out of public funds a reasonable fee fixed by the court which, in so doing, pronounces upon the manner in which the case has been conducted. In Germany, parts of Poland, and Sweden, the decision admitting a person to plead *in forma pauperis* covers not merely proceedings in the court of first instance, but also proceedings on appeal. In France a fresh application is necessary if the poor person appeals after losing his action, but the poor person is entitled as of right to assistance in the Court of Appeal if he wins his case and an appeal is lodged by the other party. In other parts of Poland, England, Japan and elsewhere, the original decision does not automatically cover proceedings on appeal.

If the poor person's action succeeds, the costs which have been incurred out of public funds may become payable by the unsuccessful party, or in some countries the poor person may be required to pay all or part of such costs out of the amount which he has recovered. *In Spain,* for

example, a successful poor litigant is liable for costs up to one-third of the amount of the judgment. A change in the poor person's circumstances while the action is in progress may lead to the withdrawal of the right to plead *in forma pauperis*. *In Spain*, if during the three years following the action the poor person becomes able to pay the costs incurred on his behalf, he may be required to do so ; the same rule exists in Sweden, but the period is five years. In Sweden, the public funds are liable for the costs of the other party if the poor person fails in his action, but this appears not to be a common rule.

In some countries assistance in litigation is not available in all the courts. *It has, for example, been a frequent matter of criticism that in the English procedure there is no arrangement for assistance to the poor before the County Courts, i.e.*, those tribunals which deal with cases involving small interests. On the other hand, the development in some countries of special subordinate courts dealing with minor interests, or the establishment of a special procedure for settling disputes connected with wages and conditions of work, workmen's compensation, rent, etc., may, in itself, be of great value to the poor. For example, under a Spanish law of 1912, justice is administered gratuitously in the industrial tribunals, and the provisions of the ordinary law as to free legal assistance also apply.

In the United States of America the position in regard to assistance in litigation is somewhat complicated (See the article by J. M. Maguire in *Harvard Law Review*, Vol. 36, No. 4, page 361). In a number of States there is no *in forma pauperis* procedure. A few States have either held that they have inherited the old English *in forma pauperis* procedure as part of the English common law, or that exemption of the poor from costs and fees, and even the right to free legal service, are implied in the constitutional provisions guaranteeing unbought justice to all. In other States there is a statutory procedure the general principles of which correspond in the main to the description given above.

2. *Free Legal Advice.*

The machinery described in the preceding section is restricted to the actual conduct of litigation and furnishes no means by which a poor person not actually proposing to bring or defend an action can obtain advice as to his legal position. In certain countries, *e.g.*, Holland, the legal obligation of members of the Bar to give their services free to poor people has, in some form or another, been made the basis of a regular organization for consultations. Speaking generally, however, this side of the subject is in practice dealt with, not so much as a part of the administration of justice, but as a kind of social work, which the public authorities may or may not regulate and support financially.

This form of social work has obtained a wide extension in the United States of America, which are covered with a network of legal aid societies supported by charitable contributions, or, in some cases, by public funds (for example in St. Louis, Kansas City and Philadelphia). These societies maintain law offices with a salaried professional staff which undertake to advise the poor as to their rights and, in proper cases, to fight actions for them in the same manner as the ordinary lawyer will do for a paying client. The work of the societies is essentially charitable, although a small charge may be made as a guarantee of the genuineness of the cases. The various societies are, in general, prepared to take cases sent to them by other societies in different parts of the country, and in 1923 the majority of them joined together to found a National Association of Legal Aid Organizations, through which they

are enabled to co-ordinate their work from the point of view of inter-State relations. It is now possible for legal aid offices all over the United States to work together and to help each other. The United States may perhaps be regarded as illustrating an ideal which might be ultimately realizable throughout the world if the necessary charitable energy and resources were available.

In Denmark, Norway and Sweden also, the work of providing free legal advice to the poor has been organized systematically and obtained official support.

In Norway and in Denmark, starting with private charitable effort, the work has come to be supported by the municipalities and the State. There are free legal aid bureaux, supported or assisted by public funds, at Christiania, Bergen, Trondhjem, and Stavanger in Norway, and at Copenhagen, Aalborg, Randers, Odense, Ribe, and Lemvig in Denmark. The Christiania bureau employs three consulting lawyers and conducts actions in court through its own barrister. The lawyers are paid by the municipality. The State subsidises the bureau on condition that assistance is given to persons not resident in the town. A committee elected by the municipality decides what cases shall be brought before the courts. In 1923 the expenses of the bureau were 25,000 kroner; 8,000 consultations were given and 100 actions were fought.

In Sweden, legal aid bureaux for the poor are established in every county. They are maintained by municipal and Government grants and are subject to uniform regulations issued by the State. They are directed by boards, the chairmen and vice-chairmen of which are appointed by the local authorities. Where necessary they have their branch offices and district advisers. They are understood to undertake every kind of legal business, including the preparation of applications to authorities, the drawing of legal documents and other work of a notarial character, as well as the conduct of litigation where necessary. Where litigation is undertaken, the bureau, of course, avails itself of the regular *in forma pauperis* procedure. Where, for example, a case is conducted by a lawyer belonging to the bureau and the *beneficium paupertatis* has been granted, the lawyer's fee is payable from the public funds, but he accounts for it to the bureau. The bureaux also act as arbitrators for the settlement of disputes. Where a poor litigant who has been assisted by a bureau subsequently acquires property, he may be called upon to repay the costs incurred on his behalf and a reasonable fee for the work done. The bureau of Stockholm, which may be taken as an example, consists of a director, five lawyers, and an office staff numbering 15. Its cost in 1923 was 151,438.08 kroner.

The legal aid bureaux in Norway, Denmark and Sweden co-operate closely with one another and have relations with similar institutions in some other countries, such as Finland, Germany, and the United States.

Outside the above-mentioned countries, the work of providing free egal assistance for the poor appears to be less systematically organized. Mention may be made of the municipal legal aid bureaux which have recently been founded in Vienna, Linz, Innsbruck in Austria. Particulars have also been furnished to the Secretariat as to the valuable work for the protection of children done by the "Zentralstelle fur Kinderschütz und Jugendfürsorge" at Vienna, particularly in connection with the protection of minors and illegitimate children. This organization maintains relations with numerous associations and persons abroad, especially in the so-called "succession States." In some countries (for example: Spain and Holland) trade unions or other workers' associations have established legal aid bureaux for the benefit of their members.

In Japan, such bureaux are sometimes attached to the police stations. It is not unusual (for example in France, Poland and elsewhere) for the Bar in the various centres to arrange for some of its members to give periodical gratuitous consultations. Missions, university settlements, Y.M.C.A. institutions, churches, not infrequently arrange for lawyers to come periodically and to give advice to all applicants. It is principally in the latter form, for example, that free legal consultations are available to the poor in England.

3. *Position of Foreigners and Persons Resident Abroad as regards Assistance in Litigation.*

The question of the admission of foreigners *as such* to assistance in actual litigation is, to some extent, already solved by the liberal practice of particular countries or by treaty engagements. Thus, England, Italy, Denmark, Norway and Sweden, some States of the United States of America and some Latin-American countries, make no discrimination between foreigners and their own nationals in this matter. In France, Germany, Holland, Poland and most other countries, however, it is, in principle, usual either to require a definite right to assistance established by a treaty with the State to which the foreigner belongs, or to make a general requirement of reciprocity. By reciprocity may be meant merely practical equivalence of treatment. It is desirable that this should not need to be proved by evidence in each individual case and mention may therefore be made of the practice in Poland where it is competent for the Minister of Justice to certify that reciprocity is, in practice, accorded to Poles in the country from which the foreigner comes.

4. *Treaty Dispositions as to Assistance in Litigation.*

The existing treaty dispositions establishing reciprocity in the matter of assistance of the poor in litigation are very numerous.

There is, in the first place, the important general international engagement constituted by Chapter IV (Assistance judiciaire gratuite) of the Convention relating to Civil Procedure, signed at The Hague on July 17th, 1905, and as regards giving of security (*cautio judicatum solvi*) by Chapter III, Article 17, of the same Convention. To this convention, Germany, Austria, Hungary, Belgium, Denmark, Spain, France, Italy, Luxemburg, Norway, the Netherlands, Portugal, Roumania, Russia, Sweden and Switzerland were originally parties. By Article 287 of the Treaty of Versailles, the Convention was again put into operation between the High Contracting Parties, an exception being made as regards France, Portugal and Roumania. The provisions of the Convention expressly contemplate applications coming from abroad. Article 21 specifies the authorities by which certificates of poverty may be given or to which declarations of poverty may be made, according as the procedure of the country in which the assistance is needed requires one or other of these documents. Under Article 22 the authority which decides upon the application retains, within the limits of its competence, the right to verify the certificates, declarations or information furnished to it.

Secondly, there are between the principal countries a large number of bilateral treaties, for the most part older than the Hague Convention, embodying provisions similar to those of the Convention.

Finally, an obligation to admit nationals of other States to assistance in litigation may arise under treaties of various kinds not dealing directly with civil procedure. Commercial treaties containing the most-favoured-nation clause, or a clause providing for free and easy access to the courts, treaties of settlement (*établissement*) or consular

treaties, may have this effect. Relevant provisions may also appear in treaties dealing with special categories of persons, such as immigrant labourers, or a special subject-matter such as workmen's compensation or insurance.

Only an exhaustive enquiry could show how far the ground is sufficiently covered by existing treaty engagements. It would not, however, seem likely to be a common case that a foreigner would be refused free legal assistance on the ground that the State to which he belonged did not accord reciprocity of treatment. So far as this aspect of the whole question is concerned, the natural line of progress would obviously seem to lie in further extension of treaty obligations to admit poor foreigners to assistance in litigation on the same basis as nationals. It may be noticed in this connection that the Conference on Emigration, held early in the present year at Rome, adopted as regards the special class of persons with which it dealt *voeux* in favour of the admission of foreigners to legal assistance on the same terms as nationals, on the condition of reciprocity, and in favour of agreements establishing reciprocity in cases where such agreements do not already exist. The principal difficulty in the conclusion of agreements on such a subject lies in the differences between the civil procedure of the various countries. The Hague Convention is not open to accessions. The question whether progress would more easily be realized by way of a new general convention or by further bilateral agreements requires careful consideration.

The above considerations were discussed by the Committee of Experts, who thought it desirable that the question of the possibility of further extension of treaty obligations assuring legal aid in litigation to foreigners, and of the form which this could take, should be examined. This matter forms the basis of their fourth Recommendation (see Section IV of this report). The question of convening an international conference to discuss the matter was raised, but it was deemed premature to make a definite proposal on this point.

5. *Positions of Foreigners with regard to Free Legal Advice.*

As regards the provision of legal advice apart from actual litigation, it is believed that applications coming from abroad from a qualified source would, so far as possible, be sympathetically considered by legal aid bureaux and similar organizations. It seems, however, that except possibly in the United States and Denmark, Norway and Sweden, the institutions and persons undertaking this form of social work do not at present possess the organization and resources which would enable them to co-operate on any extensive scale with similar foreign institutions. Apparently much would have to be done in most countries to develop bureaux for legal advice to the poor before a general system of international co-operation could be effectively established.

6. *Obstacles to Full Utilization of Existing Facilities.*

The result of the present enquiry has been to show that the facilities for obtaining help in legal difficulties and in litigation which the poor enjoy are greater than is ordinarily supposed. It became clear, during the discussions of the experts, that one of the principal difficulties in dealing with cases of poor persons who have rights to assert, or action of a legal character to take outside their country of residence, lies in the difficulty of ascertaining what assistance can be procured in that country and how it should be sought. The probable consequence is that existing facilities are not fully utilized. Those conversant with the matter appear to be generally of the opinion that it would be valuable if international arrangements could be made to render easier

the obtaining of information as to what facilities exist and the utilization of such facilities. It was, moreover, thought desirable that further development of facilities should be promoted by enabling authorities and persons interested in the problem to study the solutions which have been attempted in the various countries and to build upon the experience of foreign countries. For proposals intended to promote the realization of these objects the Secretary-General refers to the recommendations formulated by the Experts (Section IV of this Report)

III. MEETING OF THE COMMITTEE OF EXPERTS.

For the purposes of the present report, the Secretary-General, with the approval of the Council (Resolution of March 13th, 1924) convened a small Committee of Experts from different countries which was invited to consider the question in all its aspects and, in particular, to make recommendations. This step was rendered possible without expense to the League by the generous assistance of the National Conference of Legal Aid Societies of the United States, which made a grant of the sum necessary to cover the expenses of the meeting out of the funds which have been placed at its disposal by the Carnegie Foundation.

The Committee was constituted as follows :

M. Lucien Baudelot, Advocate at the Court of Appeal at Paris.	*France.*
Sir T. Willes Chitty, Senior Master of the Supreme Court.	*England.*
Professor Mikael Lie, Professor of International law at the University of Christiania.	*Norway.*
Professor Silvio Longhi, First President of Court of Appeal.	*Italy.*
Professor S. Nagorski, Professor of Civil Law at the University of Warsaw, Member of the Polish Commission on Codification.	*Poland.*
Professor Adolfo Posada, Professor of Public Law at the University of Madrid, ex-Director of the Institute of Social Reform.	*Spain.*
Mr. Reginald Heber Smith, Chairman of the American Bar Association Committee on Legal Aid Work ; Secretary of the United States National Committee on Legal Aid Work.	*U.S.A.*
Professor Kenzo Takayanagi, Professor of Law at the University of Tokio.	*Japan.*
Dr. L. Varley, Technical Adviser on Migration to the International Labour Office.	*International Labour Office.*

The Committee met, assisted by the Legal Section of the League Secretariat, from July 30th to August 2nd, 1924, inclusive. Much valuable information was supplied by the members both in the form of written memoranda and in oral statements at the meeting. Communications were also received from the Austrian Government and, through the German Consulate at Geneva, from the Committee of the German Bar Association (*Vorstand des deutschen Antwaltvereins*). This information has been fully drawn upon in the early part of the present report.

The Committee was in full agreement as to the international im-

portance of the question. It unanimously decided to put forward the recommendations set out in the following section of this report. Finally, it had before it various suggestions which it considered should be mentioned in the report and which are accordingly reproduced as Section V.

IV. RECOMMENDATIONS OF THE COMMITTEE OF EXPERTS ADOPTED BY THE COMMITTEE ON AUGUST 2ND, 1924.

The Committee of Experts referred to in the last section unanimously adopted the following recommendations, which the Secretary-General has the honour to submit to the Assembly.

I

" That the Secretariat be invited to prepare a list (1) of the agencies, both public and private, which have been established in each country for the purpose of giving to poor persons legal assistance in connection with litigation in the courts or free legal advice and consultation ; and (2) of international organizations that are interested in providing or securing legal assistance to poor persons.

" That this list should be printed and distributed to the various Governments and be available for the agencies named therein and for other interested institutions.

" That this list should be revised by the Secretariat from time to time in order that it may mention agencies that may hereafter be established or abolished."

II

" That the Secretariat be invited to collect the various treaties, laws and other provisions regulating legal assistance to poor persons in the various nations and between the various nations.

" That such treaties, laws and other provisions or summaries thereof be published and distributed to the various Governments, and be made available to the agencies mentioned in the list of legal aid associations and to other interested institutions."

III

" That each Government should be invited to nominate an authority or other duly qualified person who would answer enquiries from authorities or other duly qualified persons in other countries with regard to the facilities afforded, in the country applied to, for giving legal advice and assistance in litigation to poor persons in other countries.

" That the Secretariat be charged to publish from time to time the list of authorities or persons designated by the various Governments."

Explanatory Paragraph. It is often difficult to find out what assistance, official or unofficial, is given in a foreign country to poor persons who desire to take or defend legal proceedings, and it is thought that it is desirable to afford some easy means of obtaining information on the subject. It is thought that this would be afforded if some person or body were nominated to whom application for information might be addressed.

The first difficulty that a person experiences when he desires to obtain such information in specific cases is to ascertain to whom he should direct an enquiry on the subject. At present it is very difficult to find out who in each of the different countries is likely to be able to give the desired information.

IV

" The League of Nations should invite the various States where the provisions of the Hague Convention of July 17th, 1905, regarding legal aid are not in force, to state whether they would be disposed to adhere to a convention in which the principles of the Hague Convention regarding legal aid would be embodied. If those States are not disposed to accept the principles of the Hague Convention regarding legal aid in their entirety, they should be invited to indicate what modifications would be desired.

" In any event they should be invited to indicate whether the object to be attained should be accomplished by general or particular conventions."

V

" The Committee expressed the opinion that it would be desirable :

" (1) that each Government should encourage the organization and facilitate the action of official or private associations for legal assistance to the poor.

" (2) that the official or private associations for legal assistance to the poor in the various countries should enter into relations with a view to organizing their systematic co-operation."

* * *

It is clear that Recommendations I, II and III of the Committee could not be carried into effect without incurring special expenditure, not merely for printing but also for translation and for editing of the publications contemplated. The Secretary-General would hesitate at the present moment to propose that the Assembly should vote the sums necessary for the purpose. If, however, the Assembly should, in principle, approve the said recommendations, it is hoped that the funds necessary to enable them to be carried out may be provided from other sources.

V. OTHER SUGGESTIONS CONSIDERED BY THE COMMITTEE OF EXPERTS BUT NOT EMBODIED IN A SPECIFIC RECOMMENDATION.

The following suggestions which were before the Committee of Experts were considered to be of considerable interest, although it was not decided to embody them in a recommendation.

It was proposed by M. BAUDELOT that " official legal aid bureaux should not confine themselves to granting or refusing aid before the courts ; they should be able also to name a barrister or an *avoué* to give legal advice." The bureaux referred to in this proposal are, of course, the authorities charged with the task of deciding upon applications from poor persons to be admitted free of charge to plead before the courts and for other assistance in actual litigation.

M. SILVIO LONGHI, in addition to a proposal which was incorporated in the recommendations of the Committee, made the following suggestion :

" The consulates of each State should have the special and regularly organized task in the territory in which they operate of assisting in the appointment of a barrister or *avoué* to explain, if called upon, to the authority competent to award free aid, any points of fact or law arising. This should be done not merely for the purpose of proving poverty but also for the purpose of establishing that the case which the foreign judge is asked to deal with free of charge is, *prima facie*, one which should be investigated."

M. Posada made the following suggestion :

" It should be a function and duty of the consuls and representatives of each country abroad to watch over and protect in the country in which they are stationed, the interests of poor compatriots who are not in the country, they for this purpose placing themselves in communication with official or private organizations or institutions which deal in the various countries with the general defence of the poor.

" For this purpose it should be enough for the poor person in question to send to the Foreign Office of his country a simple note of the question which is the subject of his application (drawn up, if possible, on a printed form, and without payment of a fee) in which he would set out the relevant facts and with which he would send all the preceding documents calculated to prove the right claimed. Such documents would be sent to the proper consul.

" In case of necessity, the poor person should be informed by the Foreign Office as to the conditions to be fulfilled to secure, as effectively as possible, the enforcement of his claim in the country in question.

" A procedure similar to the above exists in Spain, under the Royal Order of July 4th, 1891, in connection with the recovery of debts due abroad.

" The consul resident at the place where the claim was prosecuted should send the above-mentioned papers and the relevant documents to the organization competent to defend the poor person, taking care to ensure that the transmission is actually effected. The consul should keep in constant touch with the interested person with a view to affording him all the assistance required."

The Committee of the German Bar Association (*Vorstand des deutschen Anwaltvereins*), in a memorandum in French, transmitted to the Committee by the German Consul at Geneva, made the following observation :

" A solution of the problem must, in the first place, imply the conclusion between the interested States of a treaty assuring to foreigners the same benefits of *in forma pauperis* procedure as are given to nationals The first advantage of this would be to suppress, so far as the law permits, legal fees, etc. It would not, however, assure the choice of suitable lawyers. Under most systems of law, the choice of lawyers, *ex officio*, is made by authorities which do not usually know who are the lawyers who possess an adequate knowledge of the language and the national law of the poor stranger whose interests are in question. It would seem, therefore, desirable to regulate by international action the organization of a bureau to which poor strangers would be referred and which would propose lawyers who had registered themselves as ready and able to serve.

" Some years back the German Bar Association established a Foreign Law Committee to which belong almost all the German advocates who are familiar with foreign legislation. In agreement with suitable organizations in other countries this committee could assume the task of indicating suitable lawyers."

Annex I

TREATIES CONCERNING LEGAL ASSISTANCE

The numerous treaties which have been made concerning legal assistance to poor persons during the last half century attest the importance of the subject in international life. The most important multilateral treaty provision is contained in Articles of the Hague Convention on Civil Procedure of 1905 which are reprinted in Annex II.

Numerous bilateral treaties have also dealt with the subject. The following list, which does not profess to be complete, serves to indicate the extent to which such treaties have been entered into:

Date	*Countries*	*Subject*
1. Feb. 23rd, 1853	France and United States of America.	Consular Convention.
2. Jan. 7th, 1862	France and Spain.	Consular Convention.
3. June 15th, 1869	France and the Swiss Confederation.	Convention relating to Legal Competence and to the Execution of Judgments in Civil Matters, followed by an Explanatory Protocol.
4. Feb. 19th, 1870	France and Italy.	Convention relating to Legal Assistance.
5. March 11th, 1870	Bavaria and France.	Convention relating to Legal Assistance.
6. March 22nd, 1870	France and the Grand-Duchy of Luxemburg.	Convention relating to Legal Assistance.
7. March 22nd, 1870	Belgium and France.	Convention relating to Legal Assistance.
8. July 20th, 1871	Italy and Monaco	Assistance to Poor Persons.
9. May 14th, 1879	Austria-Hungary and France	Convention relating to Legal Assistance.
10. Feb. 20th, 1880	France and Germany	Convention relating to Legal Assistance.
11. Jan. 18th, 1883	France and Serbia	Treaty of Friendship, Commerce and Navigation.
12. May 14th, 1884	France and Spain	Convention relating to Legal Assistance.
13. Nov. 27th, 1886	France and United States of Mexico	Treaty of Friendship, Commerce and Navigation.
14. Jan. 13th, 1906	Bulgaria and France	Treaty of Commerce and Navigation.
15. Oct. 31st, 1910 16. Nov. 13th, 1910	Germany, Switzerland.	Settlement.
17. May 31st, 1911	Austria-Hungary and Bulgaria.	Convention relating to Civil Procedure.
18. Sept. 29th, 1911	Bulgaria and Germany	Convention relating to Legal Protection and Assistance.
19. Dec. 30th, 1922	Belgium, Luxemburg and Poland.	Treaty of Commerce.
20. Nov. 19th, 1923	Esthonia and Latvia.	Treaty of Economic and Financial Union

Annex II

Extracts from the Hague Convention relating to Civil Procedure signed July 17th, 1905

[*Translation.*]

III. *Cautio judicatum solvi* (Security for Costs)

Article 17.—Nationals of a Contracting State who are resident in one of the Contracting States and who appear as plaintiffs or intervene as third parties in an action before the courts of another such State, shall not be required to give security or make a deposit, under any denomination whatsoever, on the ground of their character of foreigners or on the ground of their not being domiciled or not being resident in the country.

The same rule shall apply to any prepayment required, whether from plaintiffs or from third parties intervening, towards costs of the court (*frais judiciaires*).

Any existing conventions whereby Contracting States have obtained for their nationals, irrespective of their domicile, exemption from the giving of security for costs (*cautio judicatum solvi*) or from prepayment of costs of the court (*frais judiciaires*), shall continue to be in force.

[*Articles* 18 *and* 19 *omitted.*]

IV. Free Legal Aid

Article 20.—The nationals of each Contracting State shall be admitted to the benefit of free legal aid in all the other Contracting States, on the same terms as the latter's own nationals, on complying with the law of the State in which the application for free legal aid is made.

Article 21.—In all cases the certificate or declaration of poverty must be delivered by or made to the authorities of the place at which the foreigner is ordinarily resident or, in default of such place of ordinary residence, by or to the authorities of his actual place of residence. In cases where the last-mentioned authorities do not belong to a Contracting State and do not receive or do not deliver such declarations or certificates, a certificate or declaration delivered by, or made to, a diplomatic or consular agent of the country to which the foreigner belongs shall be sufficient.

If the applicant does not reside in the country in which his application is made, the certificate or declaration of poverty shall be authenticated free of charge by a diplomatic or consular agent of the country in which the document is to be produced.

Article 22.—The authority competent to deliver the certificate or receive the declaration of poverty may obtain information as to the means of the applicant from the authorities of the other Contracting States.

The authority whose duty it is to decide the application for free legal aid shall retain, within the measure of its competence, the right to verify any certificate, declaration or information furnished to it.

Article 23.—Where the benefit of free legal aid has been accorded to a national of a Contracting State, if service of a document relating to the cause in question has to be effected in another Contracting State, the State requesting such service shall be liable to refund to the State requested to effect it, such costs only as have been occasioned by the employment of a special form as provided for by Article 3.

In the case above contemplated there shall, in respect of the execution requested to grant such execution, those sums only which have been paid as indemnities to witnesses or experts and any costs which have been occasioned by the application of Article 14 paragraph 2.

ADDENDUM

SINCE this book went to Press, it has been pointed out that no mention has been made in it of the work which lady barristers and lady solicitors are doing in connection with legal aid to the poor : and within the last few days important questions and answers have been put and given in the House of Commons, relating to legal aid to the poor.

Lady barristers and lady solicitors, in increasing numbers, are giving legal aid to the poor, not only in connection with court work, but also in connection with the legal advice part of the problem.

At Cambridge House a lady barrister has regularly for three or four years given legal advice to the poor. At Canning Town Women's Settlement a lady solicitor is responsible for a fairly large Poor Man's Lawyer Meeting, and the work is excellently done. Each year in increasing numbers lady lawyers of both branches of the profession are helping the poor in legal matters, and that aid is peculiarly useful as to legal advice, especially as to certain types of cases, such as those relating to domestic relations ; that subject being so important that, in the United States of America, special courts have been created, and special sessions of courts are held, for adjudicating on the domestic legal difficulties of poor people, the State claiming an interest in the marital and family questions of its citizens.

The questions and answers relating to this matter, put and given in Parliament since this book went to Press, are set out below. That part of each question which is left entirely unanswered is printed in black type.

Criticism, and the authority for claiming that any portion of a reply is inaccurate is set out in a bracket in black type, in the copy answer. The questions, and answers (with notes), are :—

(93) On the 18th November, 1925, to ask Mr. Attorney General **whether he is aware that the Report of Mr. Justice P. O. Lawrence's Committee on the Poor Persons Rules (Command Paper 2358) did not consider or provide for anything other than administration ;** and whether, as the terms

of reference to the committee presided over by Mr. Justice Finlay as to legal aid to the poor included the provision of further aid to poor persons in the conduct of civil proceedings other than such civil proceedings in the Supreme Court as fall within the scope of the existing Poor Persons Rules, he will consider whether Mr. Justice Finlay's Committee may be empowered to inquire and, if thought desirable, recommend the provision of legal aid for those poor persons not now within the scope of the Poor Persons Rules and whose need was not considered nor was any recommendation made thereon by the said Committee presided over by Mr. Justice P. O. Lawrence, so that provision may be made for poor persons unable to find any out-of-pocket expenses.

The answer of the Attorney General was as follows :—

No, Sir, I am not prepared to suggest to the Lord Chancellor or to my Rt. Hon. friend the Secretary for State that the reference to Mr. Justice Finlay's Committee should be extended. The subjects with which that Committee has to deal are already sufficiently extensive.

(94) On the 18th November, 1925, to ask Mr. Attorney General whether he is aware that the Report of Mr. Justice P. O. Lawrence's Committee to inquire into the Poor Persons Rules, and dated 29th October, 1919 (Command Paper 430), found that the out-of-pocket expenses other than court fees for poor persons in ordinary matrimonial cases amounted on an average to £10, and in ordinary nullity cases amounted on an average to £25 ; **and that in addition to these ordinary expenses there are sometimes additional out-of-pocket expenses for service and obtaining evidence in the Colonies and abroad, amounting according to the estimate made by the secretary of the Poor Persons' Department to at least £5 for service and at least £20 for obtaining evidence ;** whether he is aware that the Report of Mr. Justice P. O. Lawrence's Committee as to the Poor Persons Rules, dated 17th February, 1925 (Command Paper 2,358), suggested that the maximum deposit payable by poor persons to cover their out-of-pocket expenses should be £10 ; **and whether he can suggest any source or fund from which these large and necessary out-of-pocket expenses can be paid, and how under the Poor Persons Rules a poor person having no means can petition or defend a nullity suit involving service and the taking of evidence abroad.**

The answer of the Attorney General was as follows :—

Mr. Justice Lawrence's Report of 1919 estimated the out-of-pocket expenses for a poor person in an ordinary matrimonial case at £5 (excluding office expenses, a charge for which is not permitted) and not £10, as stated in the question, and the cost of a nullity case—subject to the same exclusion—at £20 and not £25. **[The question is accurate. See Paragraphs (9) and (10) of the Report. The Report did recommend that a solicitor's expenses for clerk's time and copying documents estimated at £5 a case should not be allowed, thereby creating and causing the present dearth of conducting solicitors.]** The Rules now in force require a deposit of £5 or £15, as the case may be. The now proposed Rules enable the Solicitors' Committee to require a deposit in the first place of £5, and if that sum be found insufficient, a further £5. It is hoped that the measures of decentralization proposed in the Report and the draft Rules will diminish considerably the out-of-pocket expenses. **[How can decentralization enable a destitute person to pay anything ? All that decentralization can do, is, in certain cases, to reduce somewhat the travelling expenses of witnesses. Paragraph (45) of the Report of Mr. Justice P. O. Lawrence's first Committee, when considering the question of decentralization, expressly states—"the expenses would not in all cases be reduced, as witnesses often have to come from a different locality."]**

(92) On the 18th November, 1925, to ask Mr. Attorney General whether he is aware that the Report of the Poor Persons Rules Committee, presided over by Mr. Justice Lawrence, recommended, and the Rules of the Supreme Court (Poor Persons), 1925, subsequently provided, a privilege with regard to sex, in connection with legal aid to poor persons in the Supreme Court, **by abolishing so far as married women are concerned, the rigid poverty test limit, and by retaining a rigid poverty test limit so far as poor married men or any other kind of poor person is concerned ;** and whether he will extend the scope of the reference to the Committee as to legal aid to the poor, presided over by Mr. Justice Finlay, so as to enable that Committee to consider the desirability or otherwise of recommending the abolition of the rigid poverty test limit, so far at any rate as poor married men are concerned, in High Court litigation.

The answer of the Attorney General was as follows :—

Mr. Justice Lawrence's Committee recommended that the test as to means should remain the same **[The Report was contradictory]** as under the Rules of 1919. It is impossible in the limits of an answer to a Parliament Question to state fully and exactly the respective rights and obligations of a husband and wife engaged in matrimonial proceedings. The only effect of the Rule now in force and that proposed to be substituted for it is to apply the ordinary law to poor persons. **[The ordinary law is that a husband in matrimonial proceedings pays or secures his wife's costs. A poor person without means cannot do this. This obligation, without State aid, causes a denial of justice. The question is not directed to the ordinary law, but to the rigid poverty test limit, which, with the exception of Spain, England is the only civilized country to impose on the poor when seeking legal aid.]** I am not prepared to suggest that the reference to Mr. Justice Finlay's Committee should be extended.

(95) On the 18th November, 1925, to ask Mr. Attorney General, whether he is aware that the Report of the Poor Persons Rules Committee, presided over by Mr. Justice P. O. Lawrence (Command Paper 2,358), recommended that the Poor Persons' Department should be abolished, the work of that Department to be taken over by the Law Societies, who were to obtain an honorary secretary, or a librarian, or a clerk, with power to pay a small honorarium, unless the clerk (or librarian) was willing to do the work in his spare time, the work being mainly that now done by the secretary of the Poor Persons' Department, and that the accommodation of the clerk (or librarian) and the Committee should be a single room at the local courts or in some public building ; whether it is intended that the clerk (or librarian) should give legal advice in the one room used as inquiry room, writing room, and consulting room ; and whether he will ask the Committee as to legal aid to the poor, presided over by Mr. Justice Finlay, to inquire, and if necessary make recommendations, as to the librarian and his accommodation ?

The answer of the Attorney General was as follows :—

It is not intended that the official employed by the Law Society or local Law Society should give legal advice. His duties will be purely administrative. **[The Report**

of Mr. Justice P. O. Lawrence's Committee in Appendix iii suggests that a poor person's application form should be sent in the first instance to the clerk, "who should, after examining it, send for the applicant for a personal interview. Unless the facts disclosed clearly that there was no reasonable ground for the application, the clerk should make an appointment for the applicant to see the Committee." So that even if the clerk does not give legal advice, which is what the poor want at the very earliest stage of legal trouble, at any rate he does have to exercise some minor judicial function in deciding whether there is a prima facie case.] The arrangements as to the accommodation of the Solicitors' Committee will differ according to the local circumstances. They are in an advanced state of preparation, and it is not necessary nor would it be possible to make them the subject of an inquiry by Mr. Justice Finlay's Committee.

(18) On the 19th November, 1925, to ask the Secretary of State for the Home Department **whether he is aware that the Report of the Poor Persons Rules Committee, presided over by Mr. Justice P. O. Lawrence, recommended, and the Poor Persons Rules provide, legal aid in the High Court for only one out of the three classes of poor persons requiring legal aid in order to secure justice in such court;** and whether he will consider whether the scope of the inquiry by the committee appointed by him as to legal aid to the poor, and presided over by Mr. Justice Finlay, may be enlarged so as to enable that committee to consider an alteration of the present practice and rules with regard to the poor and the administration of justice in the High Court.

The answer of the Solicitor General was as follows :—

I have been asked to reply. Mr. Justice Lawrence's Committee dealt only with litigants in civil proceedings in the Supreme Court. Mr. Justice Finlay's Committee deals with persons who are parties to proceedings, whether civil or criminal, in other courts. I am not prepared to recommend any extension of the Terms of Reference to that Committee.

(92) On the 25th November, 1925, to ask Mr. Attorney General whether, when the committee on legal aid to the poor (Mr. Justice Finlay's Committee) was appointed, a

member, and, if so, who, was appointed by, or to represent, the Treasury ; and whether the object of such appointment was to assure compliance with certain Treasury rules or minutes prohibiting the expenditure of public moneys on legal aid to the poor.

The answer of the Attorny General was as follows :—

Mr. Justice Finlay's Committee includes among its members a gentleman who holds the position of Deputy Controller of Supply Services at the Treasury. I assume that the object of his appointment was that he might give the Committee the benefit of his knowledge and experience on any question arising in which the Treasury were concerned. No Treasury rules or minutes exist prohibiting the expenditure of public monies on legal aid to the poor, and in fact considerable sums of public monies are so expended. **[No public monies are expended on civil legal aid to the poor, other than the annual sum of £3,000 for the Poor Persons' Department, and in connection with the remission of court fees, for middle class poor persons, and only in one civil court—viz., the Supreme Court. The fund, recommended by the Report of the first Committee of Mr. Justice Lawrence, for payment of the out-of-pocket expenses of the poor, has never been formed or provided.]**

(93) On the 28th November, 1925, to ask Mr. Attorney General, whether he is aware that the Report of Mr. Justice Lawrence's Committee (Command Paper 430) found as a fact that the reason why there only came to trial one-fourth of the applications granted to poor persons to proceed under the Poor Persons Rules was mainly due to the poor persons being unable to find the necessary out-of-pocket expenses to enable them to start or proceed with their cases ; whether he is aware that the said Report expressed the opinion that, unless a fund were formed for the payment of poor persons' expenses, the really poor or quite destitute persons have no chance of availing themselves of the Poor Persons Rules ; and whether the committee of solicitors referred to in the Report of Mr. Justice Lawrence's Committee (Command Paper 2,358) will themselves establish the before-mentioned fund and, if so, from what sources.

The answer of the Attorney General was as follows :—

The observations quoted by the Hon. Member from Mr. Justice Lawrence's First Report (which was presented in

1919) have reference to only matrimonial cases. The Report was founded upon the facts as they then existed. At that time there might be taxed against the poor person **[and against his rich opponent if he is unsuccessful]** a sum of money in respect of office expenses **[consisting of the out-of-pocket expenses for clerk's time and stationery]** in addition to out-of-pocket expenses in the true sense. As a result of that Report the charge for office expenses was prohibited and the cost thereby reduced 50%. **[If there were many witnesses, or if a husband had to pay his wife's costs of matrimonial proceedings, or if evidence had to be obtained abroad, such reduction would not be 50% but less than 25%. In fact the recommendation that a solicitor acting gratuitously for the poor should not even receive the whole of his out-of-pocket expenses is one of the worst features of the Report of Mr. Justice P. O. Lawrence's Committee, and which indeed recognized the impracticability of the prohibition of the expenses incurred in the office: Paragraph 33 of such Report expressly stating—"if no such allowance is made it may result in nobody being found willing to undertake these cases." That is exactly what is happening. It is impossible to make volunteers work on unfair terms, and to supply not only their personal free service, but also labour for which they have to pay, and their material such as stationery for which they also have to pay. Neither medical men, nor other persons, giving free voluntary service, are expected or allowed to pay for such things out of their own pockets. And no amount of decentralization will make volunteers work on grossly unfair terms. The same Report (Paragraph 38) states that if a fund were established to provide for the expenses of Poor Persons, the number of applications as well as of cases entered and tried would no doubt increase enormously."]** It is hoped that as the result of Mr. Justice Lawrence's second Report, presented in 1925, a further reduction in cost will be effected through the measures of decentralization therein proposed. **[How can decentralization help a conducting solicitor to pay his clerk's wages or his stationery? Or how can decentralization to the English Counties help a poor man, either to pay for the cost of taking evidence abroad, or to pay his wife's costs of matrimonial proceedings?]** As I have on more than one occasion stated, I am not prepared to recommend any further grant of public money, and I do not anticipate that the Solicitors' Committees will themselves establish any fund. There is

no evidence that in any substantial number of cases an incapacity to find the deposit required in a matrimonial case interposes a bar to proceedings by a poor person. **[The Report of Mr. Justice P. O. Lawrence's first Committee is quite sufficient evidence.]**

(15) On the 2nd of December, 1925, to ask Mr. Attorney General whether he is **aware that the Report of Mr. Justice P. O. Lawrence's Committee (Command Paper 2358) made no provision or recommendations as to the following out-of-pocket expenses of poor persons, which could not be affected by decentralization, namely, a husband's liability in matrimonial proceedings to pay or secure his wife's costs, whether or not he is a poor person admitted to proceed under the Poor Persons Rules, and the costs of service and obtaining evidence abroad, and which have been estimated by the secretary of the Poor Persons' Department to amount, in an average case, to at least £25; and what steps are proposed** to enable a poor person, under either the old or the proposed new scheme of legal aid in the Supreme Court, being entirely without means, to pay or secure his wife's costs or have service effected and evidence obtained abroad.

The answer of the Attorney General was as follows:--

The amount of deposit required under the present Rules in a divorce case is **£5 [Compare this with previous answers, and with Mr. Justice P. O. Lawrence's first Report, and also with the Report of the Special Committee of the Law Society.]** The cost to a poor person petitioner (whether wife or husband) is found in practice, in the great majority of cases, to be less than that amount. **[The reason is that in most cases the work is not done in the way an ordinary case is conducted]**, and the difference is returned to the petitioner. It is to be expected that the amount of the costs (whether wife's or husband's) will be considerably reduced on an average by decentralization. **[Decentralization can only affect travelling expenses.]** Rare cases occur where greater cost is necessarily incurred, and as I have repeatedly stated, it is not proposed to make any grant from public funds towards the expense of those costs.

(56) On the 2nd of December, 1925, to ask Mr. Attorney General **whether he is aware that the main defect of the Poor Persons' Department, recommended to be abolished by the**

last of Mr. Justice P. O. Lawrence's Committees, was that it had no power to give and was incapable of giving, because there was no lawyer on its staff, legal advice to the poor; and whether he will recommend or cause recommendations to be made to the committees of solicitors referred to in the Report of the committee presided over by Mr. Justice P. O. Lawrence [Cmd. 2,358], that the clerk or librarian also referred to in the said Report should receive a proper legal education before undertaking his duties, and that the small honorarium, and also his accommodation, recommended in the said Report, then be moderately increased.

The answer of the Attorney General was as follows:—

The Hon. Member has misconceived the functions performed by the Poor Persons' Department **[In answer (92) on the 18th of November, 1925 the Attorney General states that the only effect of this rule was to apply the ordinary law to poor persons. The ordinary practice for an ordinary person is to receive legal advice as the first requisite before any litigation is undertaken]** and to be performed in the future by the official, if any, employed by the local Law Society. These functions are purely administrative and do not include the giving of legal advice. **[On the contrary, the clerk or librarian has to do something of a quasi judicial character. Appendix iii to the Report of the last of Mr. Justice P. O. Lawrence's Committees (Command Paper 2,358) which sets out the method of carrying out the scheme recommended, states that the poor person's form of application is to be sent to the clerk in the first instance, "who should after examining it send for the applicant for a personal interview. Unless the facts showed clearly that there was no reasonable ground for the application, the clerk should then make an appointment for the applicant to see the Committee."]**

(57) On the 2nd of December, 1925, to ask Mr. Attorney General whether, seeing that **the Poor Persons Rules, and those contemplated, prohibit a poor person proceeding under the said rules from recovering, when successful, any costs other than the out-of-pocket expenses, since 1919 reduced by some 50 per cent.; that in ordinary litigation in England by ordinary persons a successful party recovers ordinary costs in addition to the out-of-pocket expenses; that every civilized nation except England, whose only State legal aid to the poor**

in civil proceedings is the remission of court fees, allows a successful poor person to whom legal aid has been given in civil proceedings to recover from the unsuccessful party costs as well as out-of-pocket expenses like an ordinary litigant; and whether he will recommend, or cause recommendations to be made, that the old Chancery rule before the Judicature Acts, allowing ordinary costs as well as out-of-pocket expenses to a successful poor person, to whom court fees have been remitted in civil litigation, may be restored.

The answer of the Attorney General was as follows :—

I do not accept the assumptions of fact contained in the question. **[This non-acceptance of the actual law, in England at any rate, is a little remarkable when one remembers the answer of the Attorney General given in the House in August, and when one refers to his answer, No. 93, on the 28th of November, 1925, which claimed that since 1919 the out-of-pocket expenses of a solicitor acting for a poor person had been "reduced by some 50 per cent." The Attorney General then seemed to take credit that the solicitors' out-of-pockets had been reduced. When his attention is called to the fact that such reduction is contrary to universal ordinary practice, and priviliges an unsuccessful rich man, when engaged in litigation with a poor man, the November claim, made as a statement of fact, is not accepted.]** The answer to the question itself is in the negative. **[So the Government deliberately intends to put a poor person using the rules in a position different to all other litigants, and refuses to allow him ordinary costs, which in England used to be allowed to him.]**

(58) On the 2nd of December, 1925, to ask Mr. Attorney General **whether he is aware that, with the exception of Spain, England is the only civilized country in the world that has a rigid poverty test limit as a condition for granting civil court aid to poor persons; whether, as the Report of the committee presided over by Mr. Justice P. O. Lawrence (Command Paper 2,358) recommended that the rigid poverty test limit so far only as concerns married women in matrimonial proceedings should be alternatively abolished, but should be retained for all other poor persons, he will consider whether in the interest of justice the rigid poverty test limit should not be entirely abolished and legal aid be given to all poor persons, in all cases where it is necessary because of poverty, to secure justice in**

the circumstances of each particular case, such being the practice in Scotland; and whether he will recommend or cause recommendations to be made in the proper quarters to secure the equal adminstration of justice to the poor in civil proceedings without exclusion by a rigid limit either as to income or capital, legal aid being given to the poor, in whole or in part, where necessary to secure justice.

The answer of the Attorney General was as follows :—

No, Sir, I am not prepared to make any such recommendation.

The explanation of these answers must be that the brilliant and popular present holder of the office of Attorney General, who, as is generally known, deeply sympathizes with the poor, simply does not understand the problem of legal aid, and is obsessed with the idea of false economy at any price, even where justice is concerned.

These questions and answers in Parliament alone justify what is written in the Foreword and Preface to this book. They show conclusively that those in authority are looking at the matter from the wrong point of view—regarding the problem of legal aid as charity, of a very peculiar species, and not as justice.

In particular it is clear :—

(1) The Government will spend no money on legal aid to the poor in the Supreme Court—except some very small sum of £3,000 or £6,000 for administration.

(2) That it is content, that the poorest of the poor who cannot find *any* out-of-pockets—not even the £5 deposit—and also those poor persons who can find part, but not the whole, of the expenses of High Court litigation, should actually be denied justice in the Supreme Court.

(3) That it is content that poor persons, who wish to take approved nullity proceedings, or whose cases require evidence to be taken abroad, or who are precluded from continuing proceedings, which have been approved and sanctioned by the proper authorities, because, and because only, they cannot, in addition to paying their own out-of-pocket expenses, also pay or secure the costs and out-of-pocket expenses of the other side, should be actually denied justice in the Supreme Court.

(4) That it is content to retain the absurd rigid poverty test limit (except as an alternative in certain cases where married women are concerned), which is not found in any other civilized country, except Spain, and perhaps Russia, if that country can be called civilized.

(5) That it is content that a poor person in civil proceedings should be treated differently to any other litigant, contrary to the practice and rules of the Chancery Courts in England before the Judicature Acts, contrary to the present practice with regard to poor persons in Scotland, contrary also to the practice of nearly every other civilized country—by denying to such a poor person, when successful in litigation, the ordinary costs which an ordinary litigant invariably gets. It is content that an unsuccessful rich man, who *happens* to have as his opponent a successful poor man, should *escape* the payment of any costs at all, other than the poor man's out-of-pocket expenses, since 1919 claimed to be reduced by some 50 per cent.

(6) That it is not only imposing on the altruistic and harassed conducting solicitor, who is giving free personal service, of a long-lasting and responsible character, the burden of part of the out-of-pocket expenses of the poor, but apparently it is supposed to be a very good stroke of business to prohibit such volunteer solicitor from receiving his out-of-pocket expenses for the wages of his clerks during the time they are employed on the poor persons' work and for stationery used in connection with that work, thus not only penalizing the solicitor in a way that no other volunteer is penalized in this country, and penalizing the poor, but making the fortunate position of an unsuccessful rich man engaged in litigation with a poor man, still happier even than it was before 1919.

(7) That though it is proposed to advance a small sum from public monies to the Law Society for the purpose only of administration, it is intended to advance nothing at all for the out-of-pocket expenses of the poor.

(8) That it is proposed to do nothing to remedy the most serious defect of the Poor Persons' Department, which is to be abolished, and the poor are still not

to receive proper *professional* legal advice *as the first step*, when they get into legal trouble; this being the primary and most important requisite in connection with legal aid to the poor. On the contrary, under the Report of Mr. Justice P. O. Lawrence's last Committee, a poor person seeking legal aid in the Supreme Court is to first see a librarian, or a clerk, or an hon. secretary, who is to adjudicate whether or not such poor person's case is to come before the committee of solicitors, and this business of adjudication by the librarian, and the business of the committee of solicitors, is to be done in a single room! [It is not charity run riot?]

(9) That those in authority have deluded themselves with the idea that decentralization can not only save money, but can also produce money, like manna.

(10) That those in authority ignore, or skilfully glide over, all the opinions as to facts contained in the Report of Mr. Justice P. O. Lawrence's first committee [Command Paper 430], *viz.*:—

(*a*) Paragraph (8), that the reason why there only came to trial one-fourth of the applications *granted* to poor persons to proceed under the Poor Persons Rules, was mainly due to the poor persons being unable to find the necessary out-of-pocket expenses.

(*b*) Paragraph (10), that it is not right to encourage a poor person to find a small sum, and later to tell him that the case cannot go on unless he finds more money: and that unless a fund is constituted, the really poor, or those quite destitute, have no chance of availing themselves of the Poor Persons Rules.

(*c*) Paragraph (20), that in 1918, 790 solicitors were engaged in matrimonial cases in London when they were paid, but in the same year less than 70 solicitors undertook such cases for the poor, when they were not paid—and that was before a conducting solicitor had his out-of-pocket expenses so unfairly reduced by some 50 per cent.

(*d*) Paragraph (33), that if a conducting solicitor's clerk's wages and the stationery were not allowed as out-of-pockets, it might result in

no solicitor being found willing to undertake such cases.

(*e*) Paragraph (38) that the reason why so few cases are entered and tried by the courts, is that the Government has established no fund for the out-of-pocket expenses of the poor.

(*f*) Paragraphs (44) and (45) that decentralization, which can only affect travelling expenses, would not in all cases reduce the expenses of travelling.

(*g*) Paragraph 44, that decentralization, which alone is claimed to reduce the expenses of High Court litigation to the poor, and which is the sole remedy suggested by the answers in the House to questions enquiring how the poor are to provide the out-of-pocket expenses, is condemned as to any proceedings before the trial, on the ground that if interlocutory proceedings were heard by *local* practitioners, "this would, no doubt, lead to publicity of the proceedings in the locality prior to the hearing, which would be *most undesirable*. In our opinion only *officials* of the Court should deal with matrimonial cases in their preliminary stages." One can conceive the feeling of horror with which the committee of 1919 would have received the proposals of the committee of 1925, as to the local librarian, and the local committees of solicitors, not merely hearing applications, but being fully acquainted with all the details of cases before trial.

The Government ignores the fact that at the present time, as to one small branch of law only, there are over 400 poor persons' cases waiting to be tried by the courts, and for which no conducting solicitor can be found, because solicitors are not willing to attempt to make bricks without straw. And by the regulations, and ruthless absurd parsimony, found nowhere else in any department of Government organization, the Government has made it quite impossible for the committee of solicitors to make equal, where poor persons are concerned, the administration of justice in the Supreme Court.

If it is claimed that the new suggested Poor Persons Rules —which only differ from the old Poor Persons Rules as to administration—make equal the administration of justice

in the Supreme Court, where poor persons are concerned, let the honesty of those making that assertion be tested, by requiring an undertaking from the Law Societies that they will definitely provide, and see to it, that no poor person shall be denied justice in the Supreme Courts, because he is unable to pay, in whole or in part, for the ordinary facilities to get justice. Of course no such undertaking will be, or could be, given under the present Poor Persons Rules. There is no intention of carrying out the provisions of Magna Carta in practice. The existing law is not to be administered. But the poor are to have administration and rules, contrary to the existing law. It is suggested again, that if the Government is honest, it should bring a bill into Parliament to amend the law and constitution so as to make it conform to the present actual practice and rules.